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ABSTRACT

This collection of papers examines different aspects of California's Rodda Act (Senate Bill 160), which went into effect in 1976. The act is intended to improve employer-employee relations and personnel management in California public schools and community colleges. This collective bargaining law, which replaces the Winton Act, provides for (1) the creation of an Educational Employment Relations Board; (2) exclusive recognition of a single employee union representing both teachers and classified staff; (3) good faith negotiations, including support of the act's impasse procedures; (4) the arbitration of grievances; (5) the explicit definition of mandatory subjects of negotiations, consultative areas for teachers, and reserved rights of management; and (6) recognition of mediation by both sides. The papers in this collection reflect mixed reactions, but uniformly indicate that it is too early yet to know how the law will actually function. Individual papers include an analysis of the statute, an outline of the national experience with collective bargaining, and the viewpoints of employers, employees, and the public of the Rodda Act. A glossary of terms and the text of the act are also included. (Author/DS)

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the RODDA ACT

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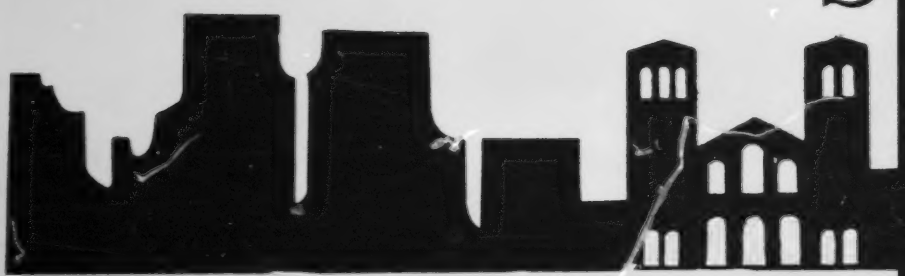

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COLLECTIVE BARGAINING IN CALIFORNIA PUBLIC EDUCATION

SB 160 --- THE RODDA ACT

Policy and Practice Papers Presented at a

Statewide Conference held in Los Angeles

December 5-6, 1975

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CONTENTS

INTRODUCTION
by Frederic Meyers

I. *COLLECTIVE BARGAINING IN PUBLIC EDUCATION*

BREAKTHROUGH IN CALIFORNIA
by Senator Albert S. Rodda

THE NATIONAL EXPERIENCE
by Reginald Alleyne

II. *THE RODDA ACT*

IMPACT OF THE RODDA ACT ON CALIFORNIA PUBLIC EDUCATION
by Paul Prasow

III. *MAKING THE RODDA ACT WORK*

THE EMPLOYEE'S VIEWPOINT
by Leo Geffner

THE EMPLOYER'S VIEWPOINT
by Lee T. Paterson

THE PUBLIC'S VIEWPOINT
by John Bukey

IV. *UNDERSTANDING THE RODDA ACT*

ANALYSIS OF THE STATUTE
by Paul Prasow

STATUTORY DEFINITIONS

GLOSSARY OF SELECTED TERMS

APPENDIX
Text of Senate Bill No. 160

INTRODUCTION

*Frederic Meyers**

The Institute of Industrial Relations at UCLA is happy to present this volume, the first in a new series of publications which we are calling "Policy and Practice Publications."

The intention of this series is to provide useful information and analysis on issues which directly concern practitioners in the world of industrial relations. We conceive that to be one of our most important missions; we have been performing it for nearly thirty years in a variety of ways. This series should increase our service to the people who have real problems to solve as part of their roles at the work place.

It is, I think, fitting, that a discussion of the Rodda Act initiates the Policy and Practice Publications series. This statute, which will begin to take effect after the appearance of this analysis, poses new problems to managers in all of the some 1200 school districts, to their certificated and certified employees, and to the many organizations which have represented those employees under the procedures of the Winton Act and will now seek rights of representation under the Rodda Act.

The intensity and extent of the concern which practitioners feel over the impact of the new law was evidenced by the large response to the Institute's Conference on Collective Bargaining in Public Education--The New Rodda Act, out of which this publication grew. School people and representatives of organizations of school employees came to Los Angeles for two days, December 5-6, 1975, from all over the State in such numbers that we twice had to seek larger facilities as registrations came in.

**Acting Director, Institute of Industrial Relations and Professor of Industrial Relations, UCLA.*

I suppose the overwhelming sense of the conferees was one of uncertainty and concern. As satisfactory as many may have considered the Winton Act to have been, and despite the fact that, as Lee Paterson points out in his discussion in this collection, growing instability was a characteristic of the Winton Act period, both school managers and organizations of school employees had begun to feel some confidence in their understanding of the rules. Now, all of a sudden, they are faced with an entirely new set of rules. In the abstract many of them may have felt a new set of rules was badly needed and, again in the abstract, they may have felt that the new rules would be better than the old.

However, as Reginald Alleyne has pointed out in his most helpful background paper, rules written by legislatures can, in this complex arena, rarely be clear and unambiguous. The parties, the Educational Employment Relations Board and the courts will--over time--flesh out legislative ambiguities, often deliberate, so that the parties will gradually know with more certainty how to behave. Now, I feel sure, there is vastly more uncertainty than certainty.

On April 1 the EERB is authorized to accept petitions for elections. But each of those petitions must describe what the petitioner believes to be an "appropriate bargaining unit" -- no election can be held until the boundaries of the constituency are defined. The Act provides for negative clarity in one area--classified and certificated employees may not be in the same bargaining unit, as well as two affirmative rules which may seem superficially clear, but which turn out to be clear only in their lack of clarity--a unit that includes classroom teachers must include all teachers employed by the public school employer, and a unit of supervisory employees must include all supervisory employees of the district. And there is a set of unambiguous ambiguities--remaining questions of appropriateness

of a unit shall be decided on the basis of "community of interest among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organizations, and the effect of the size of the unit on the efficient operation of the school district."

Some of the problems which these determinations pose are discussed by the authors of the several chapters in this short work--short in part because we now can do little more than recognize problems and provide what to many practitioners will seem disappointingly few answers.

On July 1 the Act comes into full effect, and both school managers and employee organizations will be faced with what are, to them, further new uncertainties. How will the institution of exclusive representation change the relationship between the bargaining parties? How will these people and organizations respond to the new, enforceable rules concerning unfair labor practices? How effective will the ingenious blend of mediation and fact-finding be in aiding the parties to arrive at the necessary mutual accommodations? What changes will be brought about by the negotiation of enforceable contracts and the introduction of binding arbitration?

School managers will undoubtedly find themselves under unaccustomed restraints; employee organizations will be tempted to test the limits of their new position. But, as Senator Rodda points out, the statute was in very large measure consensus legislation. The circumstances of its passage augur well for the ability of the parties to accommodate to the uncertainties and to change. We were impressed by the evident desire of those who attended the Conference out of which these papers came to learn how to make the Act work. We look forward to the improvement in the climate of industrial relations in California schools which the statute, with the goodwill of the parties in its implementation, can achieve. We hope the Institute of Industrial Relations can continue to aid the parties in working toward this goal.

I

COLLECTIVE BARGAINING IN PUBLIC EDUCATION

BREAKTHROUGH IN CALIFORNIA

THE NATIONAL EXPERIENCE

BREAKTHROUGH IN CALIFORNIA

(EXTEMPORANEOUS REMARKS)

Senator Albert S. Rodda

My purpose tonight is briefly to provide some historical background and perhaps make some comments about the critical issues which are affected by the collective bargaining legislation. I'll begin my presentation with reference to the original Winton Act. I was in the Legislature when the Winton Act was passed, and I voted against it although, as a freshman senator in 1958, I was committed to collective bargaining for teachers. I had been at one time president of Local #31 of the California Federation of Teachers in Sacramento. This involvement had influenced my thinking on this issue.

As a teacher, I was of the opinion--having had some experience in matters affecting the professional status of teachers--that they should have an opportunity to negotiate in a more meaningful way with administrators and school board members. So I was supportive of the Winton Act in concept and of collective bargaining in principle. But I voted against the Winton Act on the Floor because of the manner in which those who were on the so-called negotiating council were chosen. There was no exclusive negotiation and no exclusive representation, and in the Senate the word "confer"--not even confer in good faith--was substituted by admendment for the word "negotiate," which was contained in the Assembly version of the bill. So we ended up with a law which provided for a "negotiating council" which merely conferred and which did not provide for exclusive representation; so I voted "no."

We are familiar with the fact that the Winton Act was not implemented very well in some districts and, as a consequence, in about 1970, Senator Newton Russell, then Assemblyman, introduced a bill which would significantly have amended the Winton Act. The bill was sponsored, as I recall, by the California School Boards Association. I introduced a bill which was sponsored by the author. We finally reached a consensus and the Russell bill became law. My bill was dropped; although the bills were amended so that they were identical, and the Winton Act was, thus, amended by the Russell-Rodda Act. So, it is the Winton-Russell Act which was amended by SB 160.

The Russell Act was substantive in some respects. In the first place, it contained a definition of impasse. And it introduced language into the Winton Act requiring the parties to confer in a conscientious effort to reach an agreement, which is a little bit better and stronger than just the meet-and-confer provision. There was no written contract, but there was provision for mediation; there was provision for factfinding, but not for publication of the recommendation of the factfinder; so even that legislation fell short of collective bargaining. The Russell Act did contain the same provisions relating to the strike as did the original Winton Act--reference to the Labor Code which courts had interpreted to deny the right of concerted action or the strike--but there were no provisions for a written contract and, of course, no provision for exclusive representation. The absence of a contract provision became an issue in the Los Angeles teacher's strike, which occurred about the same time the Russell Act went into effect.

At that time, the California Teachers Association--and please don't interpret my remarks with reference to any organization as being

polarized or biased--did not favor collective bargaining for teachers, while the CFT did. The following year, however, CTA changed its historic position of opposition to one of support. My recollection is that in the same year Senator Dymally authored a substantive collective bargaining bill which was sponsored by both the CTA and CFT. It was legislation that would have covered employees in the public education system from Kindergarten through the university; the bill was considered in the Senate Education Committee and died there. I voted against it because I believed that we should try to make the newly enacted Russell amendments work.

There was a great deal of mementum being generated for legislation because of the CTA support of collective bargaining. The rivalry between the two organizations, the CTA and the CFT, for collective bargaining legislation for public employees in the public education sector became very intense. In addition, the economies imposed upon higher education by Governor Reagan had the effect of intensifying union activity within the two systems of higher education, especially in the State University and Colleges System, where the whole concept of collegiality had not developed to the extent it had on the University of California campuses. As a result, the California State University faculty moved toward an approach to the problem of employee-employer relations which was more oriented toward the union model--the collective bargaining model. Looking at the membership lists of teacher organizations during those critical years, you'll find that they showed rather dramatic increases, and that fact of life created more pressure. The CFT had long supported collective bargaining, which meant that the School Administrators and the School Board members were fighting a rather difficult and almost losing battle on this issue.

Following Senator Dymally's effort, Senator Moscone became involved as principal author of legislation in 1973. The bill was SB 400 and it included within its coverage employees in public education from Kindergarten through the university system. There were five critical issues: (1) the inclusion of the two segments of higher education; (2) definition of scope; (3) language with reference to strike; (4) the agency shop; and (5) management rights. When the Moscone bill was under consideration, supported by teachers in all segments of public education, the Administrators and the School Board members testified to the effect that it lacked certain language they thought was important and that the language contained in the bill was too far-reaching in some respects. Their concern was the absence of language with reference to strike, the wide-open definition of scope of bargaining, provision for the agency shop, and the lack of the provision with respect to management rights. And, of course, the bill was opposed by the Regents of the University of California and the Board of Trustees of the California State University and Colleges System. I told Senator Moscone, when the bill was presented to the Senate Education Committee, to sit down and try to work out a compromise.

The bill came back before the Senate Education Committee the following week, but there was no compromise. The Administrators and School Board members were not the only uncompromising individuals. The uncompromising people were also the teachers, because they had political muscle in the Legislature and they knew, in a sense, that this piece of legislation would not become law because Governor Reagan would not sign it under any circumstances. I voted for the bill. It went to the Governor and he vetoed it.

In 1972, I had chaired Senate Education Committee interim hearings on this subject, but when the Moscone bill was under consideration in 1973, I did

not introduce legislation because I wanted a compromise or consensus piece of legislation to be considered seriously and I knew what was going to happen with respect to the Moscone legislation. I had been in politics long enough to know what the scene would be. I knew that no one would think about a compromise bill; so why waste my time? In that year, however, I assigned Mr. John Bukey to do the principal work in reference to collective bargaining. Mr. Jerry Hayward and Mr. John Bukey, consultants to the Senate Education Committee, and I met in my constituency with School Board members and School Administrators at their request, and they said that they wanted to cooperate in an effort to improve the existing law, because they recognized it had significant deficiencies. I said, "Well, there's no point in my undertaking that kind of task unless you are willing to make some compromises; I have to work with the teacher groups; you're going to have to work with the teachers groups; we're all going to have to work together." They agreed to such an arrangement.

At that time, I told John Bukey to study the findings of the interim committee hearing, to look at the legislative proposal made by the local group and to consult with the teachers in the various segments of education, and to try to develop a legislative consensus. The idea was to obtain comments from all parties so that I could affirm that all groups had had an opportunity to examine the legislation, to know what the intent was and, therefore, an opportunity to respond in a constructive way.

I stated at the time in response to the proposal made by the local group that "I was willing to introduce legislation and that I would try to achieve a compromise." Incidentally, a politician

may not use the word compromise; so I observed that I would struggle to achieve what we will call a "consensus." So we strove for consensus and I said, "If I ever obtain consensus in the Senate, I will fight off amendments in the other House introduced by any element involved in this legislative activity which would change substantively the provisions of the legislation, because if such amendments were made, they would create a bias and there would be no consensus. The bill, which was developed, pursuant to that effort, was SB 1857, and the year was 1974.

Fortunately, we did develop a degree of consensus and John Bukey and I conferred with people throughout the state on the legislation. The United Teachers of Los Angeles and the Classified School Employees of Los Angeles supported the bill despite the fact that it continued the Winton Act language with reference to the strike; despite the fact that it had a restricted definition of scope; and despite the fact that it did not include provision for the agency shop. They also accepted the management rights language. But some teachers challenged me that year with the charge that the bill was "an outright betrayal of teachers." I argued that "there were some substantive improvements in the bill over existing law." The bill provided for a written contract; for exclusive negotiation; and there were provisions for impasse negotiations, including mediation and public factfinding with recommendations. These were substantive changes, in my view, I observed. And I also commented on the positive aspects of the creation of a state board and the possibility of binding arbitration of contract, or "rights" disputes.

Meanwhile the courts were interpreting the Winton Act as a consequence of litigation and various decisions were handed down. These various interpretations were helpful in stimulating among the School Administrators and School Board members a desire for

a law which could be interpreted in a uniform manner and which would make sense and improve negotiations with teachers. But they did not reach that position overnight. The leadership representing the School Boards and the School Administrators had to travel about the state educating their people and urging them to take a more positive attitude toward the legislation. And I commend them for that effort; without that effort I never could have obtained the kind of support for the bill that emerged. The teachers, from their perspective, were not totally negative, but the two principal organizations, the CTA and the CFT, remained in opposition throughout 1974.

I included the community college system in the original version of the bill. That was my decision. But I excluded the two segments of higher education--the University of California and the State University and Colleges System because there are differences in their internal governance which I did not fully comprehend, but which were of such a nature that they justified in my mind a separate bill or their inclusion in a bill which would cover all state employees. The inclusion of the community colleges was justified because of the similarity of governmental organization and finance to the Kindergarten-12 schools. They were, therefore, included despite the fact that there were problems with respect to the community college academic senates or faculty councils and their involvement in decisions affecting educational policy. I thought we could, with appropriate language, however, resolve that issue. But during the 1974 session I could not bring the community colleges into any kind of an agreement; so I personally deleted them from the legislation, which, of course, was SB 1857.

That legislation, the first product of the consensus effort, in the year 1974, moved to the Assembly, having the approval of the Senate, as I have described it to you, and having the support of the elements I mentioned--School Boards, School Administrators, UTLA and the Classified School Employees of Los Angeles, and a few chapters of CTA and the CFT local in San Francisco. It was opposed by the faculty of the University of California and the State University and Colleges System because they wanted a comprehensive bill; they wanted to be included and they were afraid that if a bill became law which excluded them, they would be left out permanently. SB 1857 failed in the Assembly Ways and Means Committee by one vote, after having been approved by the Assembly Education Committee.

The following year, 1975, I introduced SB 160, which was virtually identical to SB 1857. I did so with grave reservations because Speaker Moretti had introduced in 1974 a comprehensive bill, AB 1243, to include all public employees, which died in the Senate policy committee. And, in the same year, 1974, Senator Dills had introduced--and I had voted for--legislation (SB 32) to provide collective bargaining for local government employees. The Dills' bill was approved by the Senate and moved to the Assembly, where it perished because the Speaker was determined to enact a comprehensive bill. The significance of this action is that total emphasis was to be the enactment of comprehensive, not piecemeal legislation. The Moretti bill was assigned to interim hearings and I was on the joint committee that conducted the interim hearings. The entire intent was to achieve enactment of the comprehensive legislation. The Assembly leadership, Senator Dills, and the new Governor were committed to such action, as were all teacher organizations throughout 1975.

As the 1975 session proceeded, I accepted amendments to SB 160 with reference to the definition of scope which was modestly broadened, and I also introduced compromise language with reference to agency shop. And it is important to understand that an agency shop agreement under the provisions of the bill is a matter which may be negotiated. If a school board wishes to allow it, it may introduce such a provision into the contract; the issue would then have to be submitted to all affected employees for a vote. If the affected employees vote yes, it will be necessary for every employee in that group to pay a services rendered cost fee. The legislation does not provide, however, for compulsory membership; it does not require a union shop. Furthermore, if there is an organization which is competing with another organization to be the exclusive representative, and it loses the election, only the winning organization may have the right of dues deduction. If an organization does not want to compete for the right of exclusive negotiation, if it desires to be only an educational organization, it may state that to be a fact with reference to its intent and purpose, and it may then have the right of dues deduction for its membership. This language has been objected to by some organizations because of their position of opposition to exclusive negotiation and to membership protection provisions.

After these amendments, especially the change in the definition of scope and agency shop were adopted, and also after the defeat of all of the comprehensive collective bargaining bills, the teacher groups, the CFT and CTA, began to be more responsive to the bill, SB 160.

During the entire negotiations the School Administrators and the School Boards had accepted the bill as amended and did everything they could to help achieve its enactment. It was because the bill finally had the support of the major elements of the educational community that I was able to achieve favorable action by the Legislature and place the bill on the Governor's desk.

We introduced one major amendment to satisfy the Governor; we changed the membership of the Board. The Board was to have had five members originally, but we reduced the membership to three, all of whom were to be appointed by the Governor. These individuals, it was recognized, might in the future function in the administration of a law affecting all public employees in the state; the Board membership could then be expanded. If that amendment had not been accepted, we would not now have a teacher collective bargaining law. I am convinced of that.

We all kept faith with each other, and it was that kind of conscientious effort that solved a very difficult problem. The School Boards and the School Administrators wanted the law because of the Winton Act's wide open definition of scope as interpreted by the courts; they wanted a negotiating council which spoke for the majority of the teachers; they wanted a vehicle in law which could be interpreted by a state board--the Educational Employment Relations Board--so that everyone concerned could know what the law was, what the standards were, and what the rules and regulations were statewide. And I think that the law has provisions which are for the benefit of the teachers, too. They recognized this; thus, they fully supported it.

The new law is no panacea; its success will largely be determined by the objectivity of its administration by the Board. The educational community has acted responsibly; the Legislature has acted responsibly; it is now the obligation of the Board to act responsibly.

THE NATIONAL EXPERIENCE

Reginald Alleyne *

INTRODUCTION

An appropriate short description of this conference's topic might be the two words "subtly complex." For unlike the tax, patent, anti-trust and other state and federal regulatory laws known to be complicated, labor relations laws are deceptive in their appearance of simplicity. More so than most laws, they are capable of trapping the well-meaning but unwary do-it-yourself advocate.

It is well-known that labor relations laws regulate human conduct in the work place, where almost all adults have had some experience or are close to someone who has engaged in this singularly dominating activity. It might be thought, then, that if one wanted to know how the Rodda Act, for example, will regulate the working day for California public school personnel, one could simply read the law and determine how, as a result of its passage, daily experience at work will be modified. It might be thought that after reading the law, hazy points would be cleared up by attending a conference, listening to an expert like Paul Prasow describe the law, asking questions and obtaining clarifying answers.

Actually, as those now unaware will certainly learn after listening to Dr. Prasow's analysis of the Rodda law later on, the new statute is a highly complex piece of legislation, as are its counterparts, the new public employment labor relations laws recently enacted at the state and local level throughout the United States. All of those laws reflect the product of a legislative effort to reconcile the strongly held and conflicting views of two powerful institutions.

**Professor of Law, University of California, Los Angeles.*

A distinctive feature of these laws is the close relationship which exists between the intensity of the competing pressures on the legislature and subsequent difficulties in interpreting the legislation. The more a legislature attempts to reconcile the conflicting positions of management and labor, the more the lawmakers strive to leave the two competing parties in an ideal state of equipoise where neither is fully capable of dominating the other, then, the harder it is for courts deciding cases, for commissions deciding cases, and for lawyers counselling clients, to determine what the governing labor-relations statute really means.

Legislatures react to these pressures in several common ways, and we are now able to see the product of their attempts at compromise. Sometimes the compromise is inevitable and sound; sometimes it is unnecessary and illusory and only presents a surface appearance of compromise, when in reality the purported compromise heavily favors one party.

THE LEGISLATIVE PASS TO THE JUDICIARY

In the beginning, in the mid-1960's, we had only the public sector collective bargaining legislation to examine. Now, in the mid-1970's following the proliferation of these statutes in the late 1960's and early 1970's, as well as the aging of the earliest statutes, we are able to see how governing boards, commissions, and the courts are responding as interpreters of the public sector labor relations laws. The judiciary is where most of the action is now.

One of several ways in which legislatures respond to the competing pressures of labor and management is to pass on to an administrative agency

the real decision-making function by drawing up the statutory criteria in such spongy terms that the effective law-making function is placed in the hands of the agancy created to administer and interpret the new collective bargaining law.

In an address delivered about a half a century ago, Justice Hughes of the United States Supreme Court said, "The Constitution is what the Justices (of the Supreme Court) say it is." Hughes was criticized for making that remark, which I understand he later regretted.

Frankly, I have never understood the criticism. Ever since I studied constitutional law for the first time, I have felt that phraseology like "due process of law" and "equal protection of the laws" could only mean what a majority of five justices at a given time in history thought they meant. I think Hughes was criticized for shattering the illusion that the single source of the Constitution's meaning is the letter of the Constitution and what the founding fathers intended when they wrote it almost two hundred years ago.

I believe that labor relations legislation in the United States is second only to the Constitution of the United States in the degree to which the governing criteria are so broad that the power to say what the law is has been committed to the administrative agencies and the courts. I offer two examples:

First, if teachers present to the legislature a list of items they want to include in the allowable scope of bargaining, and management presents many of the same items--class size, teacher-pupil ratios, curriculum content-- in a list of subjects they want excluded from the allowable scope of bargaining, the legislature responds by describing the scope of bargaining as "wages, hours, terms and conditions of employment," leaving to the administrative agency and ultimately to the courts the responsibility for

determining, on a case-by-case basis, what subjects fit the legislature's broad criteria.

Second, we see similarly broad language in statutory sections dealing with unit criteria. Teachers want their own unit of teachers, management wants a more inclusive unit in order to avoid fragmentation of units and fragmented bargaining patterns. The legislature responds by rejecting both parties' requests for specific language on that topic and providing instead that the governing administrative board will decide unit-determination issues on the basis of "common interests" and interrelatedness of functions"--again the breadth of the legislature's language effectively makes the administrative agency and the courts the true lawmakers.

But those two examples illustrate only one manner in which legislatures respond to the tensions generated by labor and management in the legislative arena. Let me describe others in the course of noting the state of the collective bargaining law for school personnel in the United States.

THE LEGISLATIVE ART OF GIVING AND TAKING

A second device of legislatures considering labor relations bills is the giving-and-taking process. When the competing pressures of management and labor become particularly intense, legislatures often respond by giving both labor and management something with one hand and taking away the same thing with the other hand.

Here is example "A"--and note how it relates to and tends to merge with the initially described legislative reaction of letting the agencies and courts make law:

If teachers want to bargain about subjects they regard as vitally affecting their interests and management seeks to retain unilateral authority over subjects seen as essential to management's interests,

the legislature involved might respond typically by saying that teachers have a right to bargain over "wages, hours and other terms and conditions of employment"--the almost uniform definition of the bargaining obligation--and in another section of the same statute provide, as does the Minnesota Public Employment Law, that

> a public employer is not required to meet and negotiate on matters of inherent managerial policy.

Or, the legislature involved might also provide, as does the New Hampshire Law on the subject:

> The state retains the exclusive right... to maintain the efficiency of government operations.

In those two states, and in many others with similarly overlapping provisions on the scope of bargaining, unions probably left the legislative battle fairly confident that the legislature had established a bargaining-duty criterion with which they could live. After all, was not the language "wages, hours, terms and conditions of employment" taken word for word from the formidable Wagner Act of 1935? At the same time, management representatives in New Hampshire, Minnesota, and elsewhere were probably fairly confident that the so-called management prerogative provisions would protect their interests. After all, is it not true that the Wagner Act contained no such provisions? Should it not follow that the bargaining obligation of public school boards and managers is narrower than the bargaining obligation of private sector employers?

Both parties had some reason to feel confident at the legislative level, but both sides were bound to be disappointed in the dispositions of some of their scope-of-bargaining cases in the judicial arena, where the conflicts not squarely resolved

by the legislatures would be resolved squarely in favor of one party and against the other, in concrete cases involving concrete facts. We shall see momentarily how some of those cases are being decided by the agencies and the courts--the true lawmakers. But first, another example of legislative giving and taking.

Example "B": The legislature creates an employment relations board and vests it with jurisdiction over the collective bargaining process and related personnel practices, and--in still another section of the same statute--provides as does the Wisconsin law on the subject:

> Nothing herein shall require the employer to bargain in the relation to (employer) prerogatives of promotion, layoff, position classification, compensation...fringe benefits, examinations, discipline, merit salary determination policy, and other actions provided for by law and rules governing civil service.

Or, as California's Legislature has provided in a statute authorizing local governments to create public employment regulations boards to administer local collective bargaining ordinances:

> Nothing...herein shall supersede... existing state law ... charters, ordinances and rules of local agencies which establish and regulate a merit or civil service system or which provide for other methods of admistering employer-employee relations.

How do courts respond when with one hand a statute creates a collective bargaining commission and with the other hand appears to take away all of its jurisdiction by saying that the civil service system pre-empts the collective bargaining

system? Should the court ignore the collective bargaining system? Should it ignore the civil service system? The courts' dilemma is a product of the legislatures' compromise. Whether the example just given reflects an effective or ineffective compromise may be held in abeyance. For the moment, what is important is the fact that the courts, in deciding concrete cases, are hardly in a position to compromise; necessarily, they will make one party happy and disappoint the other.

When, for example, a discharged teacher alleges that his or her discharge was based on union activity, and the school official's defense is that the collective bargaining agency has no power--no jurisdiction-- to decide that case because the Teacher Tenure Act, or some comparable statute, provides the sole remedy for unlawful teacher discharges, the courts must resolve these issues for or against the teacher. Little opportunity here for giving and taking! No such opportunity for giving and taking when courts are handed the related issue of whether an arbitrator has the power to interpret a collective agreement's no-unfair-discharge clause, in the face of a school board's argument that the arbitrator is treading upon waters reserved exclusively for the administrators of the Teacher Tenure Act; that they--and not an arbitrator chosen by the parties--have the sole decision-making function in respect of teacher discipline.

What should a court do when a teacher refuses to pay union dues and is fired pursuant to the terms of an agency-shop clause in a collective agreement negotiated pursuant to procedures contained in the governing collective bargaining statute, at a time when another statute governing tenure for teachers provides, as does New York State's tenure law, that the only grounds for dismissal of a tenured teacher are:

> (a) insubordination, immoral character or conduct unbecoming a teacher; (b) inefficiency, incompetency, physical or mental disability or neglect of duty.

Troublesome questions, and difficult because legislatures will not always come to grips with and resolve cleanly, crisply, and with finality all of the tremendously complicated policy questions presented by the competing demands of labor and management in the public-sector arena. Given the large size of legislative bodies, their heterogeneous political makeup, and the range of demands the labor relations issues offer, it would be unrealistic to expect that all such issues could be directly resolved on the floors of legislatures.

Now on to more specific issues as the relate to public school personnel and, particularly, the matter of how courts are actually deciding some of the issues I have described.

I am delighted that the complexity of collective bargaining law has been reduced in magnitude because of the California Legislature's decision to treat teachers and other public school employees as a single employee group for collective bargaining purposes. That is, however, my sole source of satisfaction with that decision.

At public sector relations conferences, the usual dichotomy is the private sector vis-à-vis the public sector. In the narrower context of the topic of this conference, it is public school employees vis-à-vis other public employees. Nonetheless, the general law of both sectors may be disposed of rather quickly.

If someone arrived from the planet Mars, here and now, and demanded a very quick description of collective bargaining law in the United States on penalty of being shot with a Martian zap gun for failure to comply with the Martians' request for brevity, the following statement might satisfy the visitor:

> Collective bargaining laws permit an election to test a union's claimed majority-representation status and a means of determining the validity of the unit of employees the union seeks to represent. If the unit is

appropriate and the union wins the election, the employer involved becomes obligated to bargain in good faith with the union. At all times, employees are free to accept or reject a bona fide union without undue coercion from the employer or the union. An exception is that an employee may be compelled to join the union or pay fees to the union if an agreement negotiated by the employer and the union so provides.

In the private sector, economic strikes are recognized as a valid means of inducing employers to accede to union demands. Such strikes are protected by law in the private sector and an employer may be penalized for discriminating against employees because of their participation in an economic strike.

In the public sector, employee strikes are illegal, at least in name. In fact, there are strikes in the public sector.

In both sectors, unfair-practice charges and representation issues are decided initially by an administrative agency appointed by the governing authority, and ultimately by the courts.

Any collective bargaining agreement reached by the bargaining parties is enforceable in court, including their agreement to submit grievances over the meaning of the agreement to final and binding arbitration.

Please put down your zap gun.

Now, a brief focus on public education personnel and how they fit the scheme described for the mythical Martian.

The National Labor Relations Act explicitly excludes all public employees from its coverage, thus leaving the issue of coverage or no coverage for public school teachers and other public employees to state and local legislatures.

As the public sector legislation began to evolve, first slowly and then torrentially, several common-threshold policy questions concerned these matters: How fragmented should a state's public employment relations policy be? Should a single state statute cover all of a state's public employees? Or should local governments--cities, counties, and townships--be authorized to act on the matter as they see fit? If the state law rather than local legislation is directly controlling, should the state legislature enact different statutes for different employee groups, as California has done for teachers and public school personnel? Or should a single statute cover all public employees?

On issues like these--jurisdictional issues--the legislatures are in complete command; they decide how power over the subject matter will be divided and who is to share it with whom, if anyone. Here the action is in the legislature, and courts mechanistically follow the legislatures' usually clear commands.

It is interesting to reflect on why legislatures respond as they do when confronted with the issue of a comprehensive versus a fragmented public-sector labor relations policy. Why, for example, would the California Legislature enact a statute covering only one class of public sector employee--public school personnel? Why did the Connecticut Legislature enact the Connecticut Teacher Negotiation Act in addition to the Connecticut Municipal Employee Relations Act? Why no collective bargaining legislation for state employees in Connecticut? In California?

Based on the available record, it seems eminently fair to conclude that if one employee group were to be singled out as the beneficiary of a state's collective bargaining law, that group would be public school teachers, not because of some peculiarity inherent in teachers' work, not because teachers are more deserving than other public employees, but for the reason that public school teachers are beginning to strike with more

frequency than any other group of public employees. And among those public employees who strike with some degree of regularity, teacher strikes probably have the most direct impact on the largest number of citizens.

Last year, in Albuquerque, New Mexico, the city's police officers struck. Perhaps it was an odd coincidence, but can you believe that during the strike the crime rate in Alburquerque went down!

Obviously, this is an extreme and isolated example to use for purposes of contrast, but I think there is hardly a way that a teachers' strike can have anything but an adverse impact on school children and their parents. The point is that legislators are aware of the rising strike rate among teachers, they are aware of the pressures that parent-citizens can bring to bear upon school officials when schools are struck and closed; and they respond accordingly.

The common response is a single comprehensive law for all public employees, including school teachers. The unique response is that of Connecticut and of Kansas and now of California and a few other jurisdictions where the governing law singles out teachers and other public school personnel for special coverage. In those cases, the strike potential among teachers is not always the single consideration, but is sometimes one that is mixed with other complex political factors that work to prevent a majority in a legislature from enacting the comprehensive all-public-employee law. The single-employee-classification law is then regarded as a compromise of the comprehensive-law position and the no-law-at-all position.

That, in my judgment, is not a sound compromise, not that the objective of a future comprehensive law is unsound. That is an ideal objective. The difficulty lies in the selected means of achieving the objective. I think the single law for teachers could defeat the objective of a comprehensive state law. At least, the possibility is real that as between the two options, no state law for any public employees in California, for

example, might have been more consistent with the desired goal of a comprehensive all-public-employee law.

The teacher-only law may establish a firm precedent for piecemeal legislation, as distinguished from a planned step in the direction of a comprehensive law. If legislatures are in fact reacting to strikes and the potential for strikes in various components of the public sector and are inclined to enact piecemeal legislation, then, as strikes occur among identifiable employee groups, the legislature might respond accordingly in a reactive, piecemeal fashion.

If, for example, public buildings in California were left in a state of disorder following repeated strikes by custodians, we might well see the creation of a Custodial Public Employment Relations Board. If that appears to be an unduly cynical view, recall that such an agency, if it came into being, would join California's Farm Labor Board, Educational Employment Relations Board, Los Angeles County Employee Relations Commission, Los Angeles City Employee Relations Board and other such agencies, each of which, independent of the other, decides cases under different laws and different ordinances, each of whose substantive provisions bear the rough outline of the seminal National Labor Relations Act.

I think that kind of a legislative response is almost entirely misplaced and that legislatures, in enacting public-sector labor legislation in direct response to strikes, are doing the right things for the wrong reasons.

Those statutes will not decrease the frequency of strikes over bargaining-table issues. When the law authorizes bargaining relationships, it ought to follow that from time to time some of those bargaining relationships will temporarily break down, and that there will be some strikes.

The new bargaining laws are useful deterrents for one form of strike: they avoid the more serious and

more bitterly contested strike for recognition by providing election procedures for testing a union's majority-representation claim, and by compelling recognition and good faith bargaining if the union is certified as bargaining representative. We know from the familiar statistics revealing rising public sector strike rates--including 106 teacher strikes last year-- that the new bargaining laws are not useful as strike deterrents, even though virtually all of them retain the ban on public employee strikes.

We can only wonder now how much more advanced the state of the public sector collective bargaining art might have been, how much lower the strike rate for public employees might have been, how much closer to the desired goal of an operating, comprehensive state collective bargaining law California might be today if the motivation for these laws had been something other than a concern for strikes. I think state governments could have met their just obligations to their larger constituencies--the public--and could have maintained more stability in the public work force today if legislatures had considered the welfare of workers in a large, impersonal bureaucracy, with virtually no control over the forces governing their working day.

On legislative divisions of power, I must apologize for what I have left unsaid in the interest of time in this area of legal and political complexities, where inter-union conflicting pressures as well as the conflicting pressures of management and labor at one time push and pull our legislators and make their tasks inordinately difficult.

Let us take the law as we find it and touch briefly upon other areas of concern to education personnel in California and throughout the nation.

BARGAINING PATTERNS IN PUBLIC EDUCATION

What are teachers seeking at the bargaining table? How successful are they in achieving their goals? An examination of reported bargaining demands reveals that teachers are seeking advances in three areas, two of which are of the old fashioned bread-and-butter variety. The three dominant areas are wages, fringe benefits, and smaller classes. Examining agency and court decisions on the issue of scope-of-bargaining, it appears that the standard statutory definition of bargainability--wages, hours, terms and conditions of employment--is under tremendous strain in public education disputes over the breadth of the bargaining obligation.

It appears that teacher organizations are pressing much harder than are other public employee groups for what might be regarded as an expansion of the list of rather conventional subjects of bargaining. Within the boundaries of "terms and conditions of employment," teacher groups want to include such items as class size, teacher-pupil ratio, curriculum content, and preparation time. In Columbia, Missouri, this year, teachers sought changes in teacher evaluation procedures; in Schenectady, New York, the length of the work day was in dispute; allocation of preparation periods was in dispute in Lynn, Massachusetts, Great Falls, Montana, and in Governor Miflin, Pennsylvania, and surely in a host of other communities in the United States where the peaceful conclusion of an agreement without a strike or strike deadline kept contract details and bargaining reports out of the news media and out of the statistics columns of reporting services like the Bureau of National Affairs' Government Employees Relations Report.

In addition to data on strikes, the reported cases also serve as a good measure of the kinds of subjects teachers are attempting to bring to the bargaining table. Here we find that, in addition to the subjects mentioned, teachers want to bargain about extracurricular activities, when the school year ought to begin, addition of a teacher reference library, and the selection of substitute teachers by the teacher to be replaced, among other items.

If we group these subjects and attempt to describe them in generic terms, we might classify some of them as relating to the quality of the product produced by the employer. Class size, teacher-pupil ratio, establishment of a teacher reference library, and the preparation time issue might fall into that category. If we take that group of subjects and consider an analogous group of subjects in the private sector and apply the private sector law to the public sector--as so many public sector employers argue should not be done--we would have to conclude that none of those subjects is a mandatory subject of bargaining.

On making this comparison, I believe one can generalize and say that in the private sector, a union may not compel an employer to bargain about the quality of the employer's product. If the United Auto Workers sought to bargain with General Motors about the Pontiac's body style or the horsepower of its engine, the NLRB and the courts would almost certainly reject the Union's claims and hold that those subjects are within the realm of an inherent managerial prerogative. I believe this would be the result even if the UAW were able to show that the Company's body style was so unsightly that cars were not selling and employees were being laid off as a result of the decrease in auto sales. Under the Constitution of the United States and the federal labor laws, employers have the right to make unilateral decisions in areas bordering on a company's right to risk corporate failure.

Returning to the teacher-dispute side of the analogy, strict application of the principle that an employer need not bargain about the quality of the work product would probably call for rejection of teacher claims that class size and curriculum content, for example, are negotiable. In identifying the quality-of-the-work-product subjects, is it not true that teachers have helped us by often proclaiming that a given bargaining dispute is not over matters of personal concern to the teachers; that, instead, the teachers' main concern is for quality education. Made in one context, the argument supports

teachers; made in another, it tends to be self-defeating. During a bargaining table dispute, it certainly makes the teachers' position a favored one in the eyes of the public. But in an unfair-labor-practice proceeding based on an alleged refusal to bargain over that subject, its status as a quality-education subject should perhaps place it outside of the scope of bargaining and make it amenable to unilateral action by the school authorities.

On those issues, while the courts have not reached uniform results, the majority of the decisions on the subject appears to support the school boards.

Take the issue of whether the beginning and end-ind dates of the school term are negotiable, an issue considered by the Michigan Employment Relations Commission in 1972. If we look at the closest parallel in the private sector, the decisions hold that management may unilaterally determine when an establishment shall open for the manufacture of the employer's product. Returning to the public sector and Michigan, in a split decision the Michigan Employment Relations Commission held that a local school board unlawfully refused to negotiate with a Teachers' Association over the beginning and ending dates of the school term by unilaterally establishing those dates.

The Michigan statute defines the bargaining obligation with that distractingly broad standard with which so many legislatures pass the tough ones to the courts and commissions: "wages, hours and terms and conditions of employment." In deciding the case in favor of the teachers, the Michigan Commission dealt with a number of problems common to agencies and courts confronted with public sector labor relations issues. Some of these I alluded to earlier. First, the problem of unduly broad statutory criteria. The Commission read the United States Supreme Court decisions interpreting the words "terms and conditions of employment" as used in the National Labor Relations

Act. The Commission concluded that the United States Supreme Court decisions stand for the proposition that the National Labor Relations Act's phrase "terms and conditions of employment" offers no workable guide; that the real test of negotiability is whether a proposed subject of bargaining "vitally affects the terms and conditions of employment"; and that that test must be applied in conjunction with another test, namely, whether the subject's negotiability would interfere with the employer's right to manage.

It ought to be apparent that none of these tests makes it easy to decide scope of bargaining cases. A subject may "vitally affect" terms and conditions of employment and at the same time interfere with the employer's right to manage if the employer is compelled to bargain over it. To meet that problem, the Michigan Commission fashioned a balancing test: Do the employees' interests in the subject as a condition of employment outweigh the right to manage? All well and good, but how does one tell? Can you place employee rights and management rights on a scale and weigh them? Or do you simply let commissioners and judges intuitively decide who ought to prevail in these cases?

The difficulties are illustrated by the manner in which the Michigan Commission reached its ultimate conclusion that the teachers were right and the school board wrong. The Commission simply said,

> The rather substantial interest which the school teachers have in planning their summer activities outweigh any claim of interference with the right to manage the school district.

The Commission did not say why the teachers' interests outweighed management's interests. And those interests may indeed be impossible to weigh on the basis of the criteria provided by the Michigan Legislature. The decision was based on intuition, perhaps. But as a quasi-judicial agency, the Michigan Commission could not duck a decision for one party and against the other. Rightly or wrongly the Commissioners no doubt did their best with the statutory

criteria they had, as will presumably any court reviewing the decision.

A second problem in the case, and one to which I have alluded, was the existence of another law arguably in conflict with the employment relations law.

In a separate statute, the Michigan Legislature provided that the school year for all school districts shall commence on the first day of July and that the length of the school term shall be a minimum of 180 days. The school board argued that the school-year statute gave the school board the sole discretion to establish school opening and closing dates within the framework of the statute. Not so, said the Michigan Commission. To the extent that the school board has discretion to work within the boundaries of the school-year statute, it must bargain about the exercise of that discretion.

One member of the Commission dissented. In addition to refuting the noted conclusions of the majority, Chairman Howlett argued that teachers did not become employees until the beginning of the school year and hence they had no terms or conditions of employment prior to the start of employment. Since the matter about which the teachers sought to bargain concerned the period during which they had no employment, the teachers had no case, concluded Chairman Howlett.

Already there is a host of agency and court decisions on this issue. Time does not permit a review of all of them, but the reasoning of the Oregon Public Employment Relations Board, in a case decided last summer should be noted. In concluding that the school year calendar is not a mandatory subject of bargaining the Oregon Board said:

> The school year is set by state standards. The calendar is set by many outside influences (weather, agricultural consideration, etc.) and is a policy duty of the school board in consultation with the patrons of the district.

So, in the one Michigan case described, we have examples of the difficulties encountered by those responsible for the interpretation of the public sector labor relations laws, difficulties generated by the nature of the legislation, its vagueness and its tendency to conflict with other legislation. The vagueness problem is also found in the private sector in the interpretation of the National Labor Relations Act, where similarly broad criteria are used. In the private sector cases, though, the NLRB and the federal courts reviewing NLRB decisions at least have had the benefit of 42 years of decisions to rely upon as precedents. Now I see that the public sector agencies and courts reviewing their decisions are beginning to draw upon these private sector precedents in those instances--and there are many--where the public sector law contains verbatim or nearly verbatim National Labor Relations Act language.

On the conflicts of public sector labor relations laws with other laws--this is a public sector phenomenon with almost no comparable parallel in the National Labor Relations Act. Here, the public sector agencies and the courts will find virtually no guidance from the NLRB or the federal courts. Overlapping and conflicting laws that make interpretation of the public sector labor laws so difficult will have to be cleared up by the state and local legislatures which created the overlap and conflict. Otherwise, agencies, courts and parties will continue to get bogged down in long, difficult and -- for the parties involved -- expensive litigation over threshold jurisdictional issues which do not reach the essence of the real questions of concern to both parties to a labor dispute.

The Michigan case described is an instructive one, but it did involve a single issue, the negotiability of the school calendar. Let me briefly summarize what is happening in the agencies and in the courts when other public sector scope-of-negotiation issues are up for resolution and decision.

Sometimes one agency in one case gets a whole range of education-related negotiability issues and has occasion to resolve all of them with a single decision.

That happened in Oregon last summer when Oregon's Public Employment Relations Board held that class size, curriculum development, the school calendar, and teacher evaluation are not mandatory subjects of bargaining. About sixteen items were deemed mandatory subjects of bargaining, including compensation for teachers who drive students to off-campus events, preparation time, but not the number of subjects to be taught, teaching hours, and other matters causing little difficulty for the Oregon Board because of their close relationship to wages and hours. A teacher reference library in each school was held to be a mandatory subject of bargaining because the reference materials "are a necessary adjunct of a teacher's job performance."

Taking the fastest possible look at the nation and the critical issues of class size and curriculum development, it appears that, so far, these matters are being viewed as managerial prerogatives.

Usually the agencies and the courts grapple with the language handed to them for interpretation, make their decisions, appeals follow, and the supreme court of the state has the last say on what the law means--and there the matter stands for the teachers' association or for the school authorities. But not so in Nevada.

There, the Nevada Supreme Court held that class size, disciplinary procedures, and curriculum development are mandatory subjects of bargaining within the meaning of the words "wages, hours and conditions of employment," as found in the applicable Nevada statute. There the matter did not stand. The school authorities went back to the Nevada Legislature, waived the State Supreme Court decision at legislators and said, in essence, "Surely you did not mean that these items are conditions of employment."

After a bitter battle, the Legislature decided that the school authorities were right and that the Nevada Supreme Court was wrong, or, perhaps that the Nevada Supreme Court correctly interpreted the Legislature's original intent and that the original

view of the Legislature was wrong. In either event, the Legislature found itself forced to think through the issue again. Was the result of that second go-round a crisp piece of legislation clearly favoring one party and disfavoring the other? No. The Legislature compromised, this time in a different way. Rather than let stand the broad pass-it-to-the-courts criteria, the Legislature specifically and flatly said that class size and curriculum development are not negotiable, but to mollify the anger with which that decision was sure to be greeted by teacher organization, the Legislature also specifically said that preparation time and work-force reduction procedures are negotiable, along with wages, sick leave, insurance, grievance arbitration procedures, and other matter.

Is it in the public's interest when a legislature so responds to a court's interpretation of a broad negotiability standard? Should negotiability issues be hammered out item by item on the floors of legislatures? Or should legislatures continue to do as most do, namely, adopt the broad criteria and let the battles over specific items take place in the judicial arena on an item-by-item, case-by-case basis or in a single case raising the issue of the negotiability of several important subjects?

A SUGGESTED USE OF AGENCY RULE-MAKING AUTHORITY

One approach, not used anywhere so far as I know, might be the legislature's use of the broad standard, "wages, hours and conditions of employment," but with instructions that the governing agency, the Employee Relations Commission or Board, will use its rule-making authority to determine the negotiability of different subjects. Rather than wait for a contested case, the governing board would hold hearings, listen to various union and employer groups, and then publish as part of its rules a list of items it deems negotiable and those it deems not negotiable within the meaning of the legislature's rough guidelines. The state of the law would be known quickly; individual cases would be avoided in many instances, and the forum in which the negotiability decision was made would be better suited than both a legislature and a court to make sound decisions. The rule-making hearing would be

less adversary than an unfair-labor practice hearing, and the Commission could decide as many negotiability issues as it deemed expedient, rather than rule on a single issue placed before it in an adversary context. The published rules would be more readily available to concerned parties and the public than are the decisions made in case-by-case adversary proceedings.

The rule-making route would also allow the fashioning of differing standards for different areas of employment. California's Rodda Law, for example, at Section 3543.2 specifically lists certain education subjects as negotiable. It might not be possible for a legislature to draw up a comparable list for all public employment in the state. An expert commission working on public sector labor relations problems could do that through its rule-making authority.

It might be argued that a legislature would be unwilling to give a commission that authority. My response would be that if a commission now has the authority to say that class size is or is not negotiable within the meaning of "terms and conditions of employment," following a drawn out unfair-practice proceeding, the commission already has the authority, even in the absence of express legislation, to reach the same conclusion through a rule-making proceeding.

THE REAL COLLECTIVE BARGAINING PROCESS

In those areas of settled negotiability, what subjects are being pressed at the education bargaining table? Where are the teachers' interests in the economic areas of the bargaining process, where issues of negotiability are nonexistent because of the clear relationship of the subject to the specific part of the statutory definition, "wages and hours...," and where the real issue is whether teachers have the means to induce school authorities to meet their demands?

These economic issues predominate this year because, in a word, the economy is bad. This has tended to sharpen up bargaining table tensions in public education. It is no longer a matter of budget-as-usual in government. While New York City is the extreme case, we know that, fiscally, things are tight throughout public employment. Teachers once had broad public support in their effort to improve teachers' wages and working conditions. Now, teacher requests for what would ordinarily be looked upon as a reasonable raise are being viewed with at least some semblance of public hostility. Where teachers were once told that their relatively low pay was more than made up for by their superior job security, teachers are now seeking to attempt to negotiate no-layoff clauses in anticipation of reductions in force. The bargaining process in public education is now being put to its most severe test. Will it work? Is it working now?

These are hard questions to answer, despite the mass of available data on bargaining patterns and strike settlements. I think the process is working, but not as it was intended to work.

The September 8, 1975 issue of Government Employee Relations Report quotes the National Education Association as reporting that in settlements reached by that time, teacher raises were averaging between 5 and 11 percent and that a few teacher associations had won cost-of-living clauses. According to the law as it ought to work and as it was intended to work, all of these agreements should have been concluded by mutual agreement between the parties involved, without the aid of any outside assistance or with the assistance of a mediator and the assistance of a fact-finder whose decision would either be accepted by both parties or serve as the basis for further and successful negotiations. According to the law, there are no public sector strikes because the law forbids them.

I believe that every one of the agreements to increase teacher salaries from 5 to 11 percent was negotiated either (1) because there was a strike, or (2) because of the possibility of a strike. I think that in the absence of strikes or the real possibility of strikes, together with the absence of compulsory final and binding arbitration, very few teachers anywhere in the United States would have received a wage increase this year, notwithstanding increases in the cost of living.

Another area in which the bargaining process in the public sector works, but not as intended, is in the resolution of unfair-practice charges and employee grievances. These processes are eventually concluded, but the amount of time they take for completion is great and growing. The number of jurisdictional defences available to employers, because of the statutory overlaps and conflicts, only some of which I have described, is almost limitless. It may take a grieving union three years to find out which of several commissions has jurisdiction over its unfair-practice charge; following that, the commission with jurisdiction may choose not to exercise its jurisdiction on the ground that an arbitrator should first have an opportunity to hear the case. I think the public is roughly aware of what law-created rights might be vindicated, but is decidedly unaware of the time and expense involved in using the available process--how long it might take, for example, to determine what unit of teachers might be appropriate, whether a representation election was conducted fairly, and whether a school board failed to bargain in good faith.

In these respects and in many others, the complexities of the collective bargaining process tend to defeat it, though that was surely never intended by the legislators who created the process in a swirl of controversy and conflicting demands.

II

THE RODDA ACT

IMPACT OF THE RODDA ACT ON
CALIFORNIA PUBLIC EDUCATION

IMPACT OF THE RODDA ACT ON CALIFORNIA PUBLIC EDUCATION

*Paul Prasow**

On July 1, 1976, the Winton Act will be completely replaced by the Rodda Act (SB-160), under which teachers and classified employees will have many of the same rights enacted for employees in the private sector 40 years ago by the National Labor Relations Act.

The new law protects school employees in their right to form, join, and participate in employee organizations of their own choosing without interference, restraint, or coercion; it provides election machinery to determine an exclusive representative to negotiate for teachers or classified employees on wages, hours, and conditions of employment; and it requires the public school employer to negotiate with--and only with--the duly recognized or certified employee organization in an appropriate unit.

And, most important, the New Act establishes a three-member Educational Employment Relations Board (EERB) to determine appropriate units, conduct representation elections, decide unfair practice charges provide mediators, factfinders, and arbitrators to the parties in negotiation impasse and grievance situations. (In this paper, "Board" refers to the EERB and not to a school board.)

These provisions are not novel; they are the keystones of most federal, state, and local statutes or regulations which have as their primary purpose the establishment of orderly and peaceful procedures for resolving differences that may arise between employees and employers in the private, public, and non-profit sectors of our economy.

**Associate Director and Research Economist, Institute of Industrial Relations, University of California, Los Angeles.*

What is novel is that California, the most populous state in the nation, has now joined nearly half of the states in providing for a comprehensive collective bargaining law on a state-wide basis, limited, however, to public school employees at the elementary and secondary levels, and to those in community colleges. If legislation should subsequently be enacted to cover other public employees, California will have a PERB - a Public Employment Relations Board.

Six features of the Rodda Act are of particular significance in terms of their potential impact on future employment relations in California public education. They will first be listed and then analyzed separately:

1. The Educational Employment Relations Board:
   The central and vital administrative agency established to implement and effectuate the purposes and policies of the Rodda Act.

2. Exclusive Representation:
   The recognition and certification of a single employee organization as the exclusive representative of employees within an appropriate bargaining unit.

3. Good Faith Negotiations:
   The indispensable requirement that the parties must make a genuine effort to resolve their differences, and to incorporate their agreement in a written instrument binding on all parties concerned. Good faith also requires wholehearted participation in the Act's prescribed impasse procedures.

4. Arbitration of Grievances, i.e., "Rights" Disputes:
   The parties are free to negotiate an agreement providing for final and binding arbitration of disputes involving the interpretation, application, or alleged violation of the agreement.

5. Scope of Representation:
Explicitly defining (a) the mandatory subjects of negotiations for both teachers and classified personnel; (b) the consultative areas for teachers; and (c) the reserved rights of management, and limitation of scope for the employer and the exclusive employee representative.

6. Mediation:
Recognition of the unique role of the mediator who may also serve (with the parties' consent) as impartial chairman of a factfinding panel if mediation efforts do not produce an agreement on interest issues; and who may subsequently continue mediation efforts until agreement is reached.

1. *The Educational Employment Relations Board*

Without the Board, the Rodda Act would suffer from the same fundamental deficiency that characterized its predecessor, the Winton Act. It is the Board which will give vitality and meaning to many of the unavoidably ambiguous and conflicting provisions of the Rodda Act. It is the Board which will implement the statute and fill the gaps which the state legislature could not have anticipated and could not have provided for with sufficient specificity even if it had been so inclined. The Board will function to administer the legislative intent of the Act in a multitude of particular situations, far too numerous and specialized for the courts to handle expeditiously. In time the Board will attain the necessary experience to cope with the unique characteristics of the education setting. The legislature has established standards and general criteria, but it is the administrative agency that will fashion the specific criteria and uniform guidelines out of actual cases arising under the Act.

In comparing the functions of the EERB in Sacramento and those of the NLRB in Washington, we must not overlook the much broader jurisdiction of the EERB. The NLRB operates in two major areas:

a) Unit determination and supervision of elections to give employees free choice in designating a negotiating representative for the purpose of collective negotiations.

b) The adjudiciation of unfair practice charges brought by employers and unions.

In contrast, the EERB performs these NLRB functions and more; it combines in many respects functions of the NLRB, the State Conciliation Service, the American Arbitration Association, and the Office of Labor-Management Reports (Landrum-Griffin) in the U.S. Department of Labor, which receives annual financial data from employee organizations.

The EERB is empowered to act upon and investigate unfair practice charges; it reviews or determines appropriate bargaining units; it supervises secret-ballot elections in representation cases; and it certifies or decertifies exclusive employee organizations.

In addition, the EERB furnishes the parties with lists of persons qualified to serve as mediators, fact-finders, and arbitrators. The Board is also specifically authorized to collect data, make studies, recommend legislation, and to contract with such organizations as the UCLA or Berkeley Institutes of Industrial Relations to develop and maintain research and training programs designated to assist public employers and employee organizations in the discharge of their mutual responsibilities under the Act.

Significantly, the three members appointed by the Governor to serve on the Board are not necessarily required to be familiar with employer-employee relations. The Executive Director, however, appointed by the Board, must be familiar with employer-employee relations. Clearly, the importance of this role in the effective administration of the Rodda Act cannot be overestimated.

In the absence of an unfair practice charge, the Board does not enforce interpretation of collective agreements--contract law will prevail in such cases. As with other administrative agencies, the Board's findings in a court review will be conclusive as to questions of fact, unless there is lack of substantial evidence in the record.

2. *Exclusive Representation*

This principle has been in effect in the private sector since passage of the Wagner Act (NLRA) in 1935. It should be noted that multiple representation by employee organizations has always been as rare in the private sector as it has been commonplace in the public sector. Exclusive representation provides simply that there shall be one--and only one--employee organization legally empowered to negotiate as the collective representative of all the employees in that unit, provided, of course, that the organization is qualified under the Act. We can expect that there will be "appropriate bargaining units" in which no employee organization will attain majority status now or in the forseeable future.

It is also worth noting that this principle of exclusive representation is historically characteristic of collective bargaining in the United States, in sharp contrast with the multiple representation practice prevalent in most other industrial countries where the employee organizations coexist with one another relying upon the class consciousness of the work force to maintain their organizational integrity.

3. *Good Faith Negotiations*

Both parties have a duty to meet and negotiate in good faith and to participate in good faith in the impasse procedures of the Act. Good faith means the legal obligation to engage in negotiations with the conscientious purpose of reaching an agreement. A failure to bargain in good faith is termed an unfair practice.

It is far easier to treat a charge of "bad faith" than it is to define negotiation in "good faith." An appropriate parallel may be made in the case of an arbitrator called upon to review the "reasonableness" of management's action in a grievance case. Arbitrators will generally avoid passing upon the "reasonableness" of management's action. To define "reasonableness" is all too often a complex endeavor of establishing criteria which may draw the arbitrator more deeply into the administrative life of the agency than is prudent or wise. A far more practical approach for the arbitrator is to rule upon the alleged unreasonableness of the employer in the specific circumstances of the case.

To illustrate the point: An employee receives a five-day suspension for violating a rule of the agency. The employee files a grievance protesting the suspension. An arbitrator might feel that perhaps a one-day suspension (or a written reprimand) would have been more appropriate under the circumstances. But, he might also conclude that a five-day suspension was not unreasonable; that a suspension of from one-to-five days, or perhaps even to ten days, would be within the zone of reasonableness for the offense and so rather than impose his more lenient predilections upon management, he will uphold the five-day penalty.

The duty to bargain requires employer and employee representatives to meet at reasonable times and to negotiate in good faith with respect to wages, hours, and other terms and conditions of employment. Good faith also requires the execution of a written agreement incorporating any settlements reached if requested by either party. However, good faith does not require that either party agree to any proposal made by the other party or to make any concessions. Good faith negotiation regrettably does not always produce an agreement. Good (or bad) faith determination in an impasse requires an analysis of the entire record of the conduct of both parties in the specific circumstances of the case. The parties are not necessarily expected to engage in futile marathon sessions and constant repetition of the same proposals or counterproposals unless there are underlying possibilities of a breakthrough.

4. *Arbitration of Grievances, i.e., "Rights" Disputes*

The Rodda Act provides that a negotiated agreement may provide for final and binding arbitration of disputes involving the interpretation, application, or alleged violation of the agreement. Even if a binding arbitration provision is lacking, the parties by mutual agreement may still submit such rights disputes to binding arbitration pursuant to rules established by the Board.

Arbitrations conducted pursuant to the Rodda Act are covered by the same judicial review and enforcement procedures (Title 9, Part 3, of the California Code of Civil Procedure) as are arbitrations in the private sector. It is interesting to contrast the inclusion of Title 9 of the Code of Civil Procedure involving grievance arbitration awards under the Rodda Act with the express exclusion from the Act of Section 923 of the California Labor Code. 1/

Grievance arbitration is now the standard mechanism in the private sector for resolving disputes which arise during the life of the parties' agreement. U.S. Department of Labor studies consistently report that approximately 95 percent of all collective agreements in the private sector provide for final and binding arbitration of grievances. 2/ It is by far the most widely accepted method of conflict resolution during the term of the written agreement - heavily based upon post World War II experience in the private sector.

The use of arbitration as the terminal step in the grievance procedure encourages the parties to settle their own differences during the term of a collective agreement. Even when a grievance on its face has little or no merit, the grievance procedure provides a valuable therapeutic forum for clearing the air. There is an old management saying that there is no such thing as a "bum beef," meaning that under the surface of a "bum beef" may lurk a real unarticulated dissatisfaction that management had best get to the bottom of and correct before it develops into a wider and more serious problem. To thwart the processing of a grievance

by subjecting it to an endless treadmill of technicalities is an assault upon the viability of the grievance procedure and is tantamount to plugging up the safety valve of a steam engine on the mistaken assumption that bothersome pressures will then subside.

While managerial resistance to grievance or rights arbitration is quite common, it is usually based on tactical and strategic considerations rather than on principle. In contrast, managerial resistance to interest arbitration is nearly always based upon principle.

5. *Scope of Representation*

This section is noteworthy not only for its inclusions, but for its exclusions as well.

The scope of representation under the Rodda Act is divided into three main categories.

I. Mandatory subjects of representation are limited to matters relating to wages, hours of employment, and other terms and conditions of employment. These subjects apply to both certificated and classified personnel.

"Terms and conditions of employment" are expressly defined to mean:

a. Health and welfare benefits.
b. Leave and transfer policies.
c. Safety conditions of employment
d. Class size
e. Procedures used for employee evaluation
f. Organizational security
g. Procedures for processing grievances

II. Consultative - The exclusive representative of certificated personnel may consult on:

a. Definition of educational objectives
b. Determination of course content and curriculum
c. Selection of textbooks (subject to legal limitations)

III. Employer Reserved Rights - All matters not specifically enumerated are reserved to the employer and may not be a subject of meeting and negotiating. The definition of scope, however, may not be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

It should be noted that there are considerable areas of personnel actions not only excluded from the scope of collective negotiations, but also removed from management's reserved rights. These areas are spelled out in the Education Code and cover such subjects as tenure for certificated personnel and the merit system for classified personnel.

As emphasized by the Chairman of the Los Angeles County School Personnel Commission:

"...only classified employees in the public schools and community colleges may be covered by merit systems, an item of information that will doubtless be news to many persons outside the education community. Of the approximately 1100 independent school districts in California, about 100 of them, embracing a large majority of the state's population, are covered by the merit system. Except for 13 districts where the merit system was already established, the remainder were voted in by the classified employees pursuant to the Education Code." 3/

6. *Mediation*

For the first time in the public sector (in California at least) there is statutory encouragement of the principle that mediation of interest issues is not merely a stage through which the parties pass and then proceed on to other stages.

In the private sector, the mediator (or a replacement) usually remains in close contact with the parties until the impasse is resolved. The parties generally prefer mediation, in theatrical parlance, "on stage or in the wings" until the dispute is settled. Mediation efforts in private employment usually take place prior to the expiration of the agreement or during annual wage and fringe benefit re-openings. The mediator remains available as an exploratory line of communication to be activated consonant with the needs of the parties, and he does not compete with alternative methods of impasse resolution.

Probably the most penetrating summary analysis of a mediator's role was offered more than half a century ago:

> The successful mediator never takes sides and never commits himself as to the merits of a dispute. He acts purely as a go-between, seeking to ascertain, in confidence, the most that one party will give and the least that the other will take without entering on either a lockout or a strike. If he succeeds in this, he is really discovering the bargaining power of both sides and bringing them to the point where they would be if they made an agreement without him.[4/]

The question is frequently posed: Can the mediator (conciliator) actually insulate his personal bias from his impartial function as a line of exploratory communication between the parties? An apt response to the question was given by a veteran mediator:

> In most deadlocks the conciliator has all he can do to help the parties resolve their differences on any basis mutually acceptable to them. The opposing forces in a conflict situation are usually in such delicate balance that the negotiators would instantly detect a distortion in their relationship brought about by prejudicial conduct of the conciliator. The choice for the conciliator is not that of

> partiality versus impartiality, but rather between effectiveness and ineffectiveness. Only through impartiality can he become integrated into a bargaining situation as an effective force. In short, a conciliator who desires to be effective cannot avoid being impartial. 5/

In the public sector, the mediator more often than not has been a way station in impasse relolution. If the dispute is not resolved at the mediation stage, the parties move on to the next stage, usually factfinding, sometimes interest arbitration--but the mediator's services are gratuitously dispensed with.

Under the Rodda Act the mediation function is no longer limited to a mere stage in the process. The mediator can function at various stages of an impasse at the pleasure of the parties. When mediation efforts become fruitless, the mediator may, with consent of the parties, serve as Impartial Chairman of an interest factfinding panel pursuant to impasse procedures of the Act; after which he may renew his mediation efforts.

The architects of the Rodda Act display a keen understanding of dispute settlement techniques developed by such mediator-arbitrator pioneers as George Taylor, Harry Shulman, John Steelman, Sam Kagel, and others. 6/ Mediation-arbitration, popularly referred to as "med-arb," constitutes a fusion of both processes in one person. Med-factfinding (a process advisory in nature) involves a blending or merging of those two processes in one person. Both "med-arb" and "med-factfinding" are highly innovative approaches to interest impasse resolution.

We can expect that the parties in conjunction with the EERB will develop experts who can function effectively as both mediators and factfinders in public education.

FOOTNOTES

1. Section 923. In the interpretation and application of this chapter, the public policy of this State is declared as follows:

> Negotiation of terms and conditions of Labor should result from voluntary agreement between employer and employee. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

California Labor Code, 1973, Department of General Services, Documents Division, Sacramento, California, p. 53.

2. "Major Collective Bargaining Agreements: Arbitration Procedures." U.S. Bureau of Labor Statistics, Bulletin 1425-6, 1966, p. 5.

3. "Impact of California Educational Employee Relations Act on Merit Systems." Edward Peters, Chronicle of the National Academy of Arbitrators, Edgar A. Jones, Jr., ed., March, 1976.

4. Principles of Labor Legislation. John R. Commons and John B. Andrews, Harper and Brothers, New York, 1916, p. 126.

5. "The Mediator: A Neutral, a Catalyst, or a Leader?" Edward Peters, Labor Law Journal, Commerce Clearing House, Chicago, October 1958, pp. 764-69.

6. "Using Two New Arbitration Techniques." Sam Kagel and John Kagel, Monthly Labor Review, U.S. Government Printing Office, Washington, D.C., Nov., 1972, Vol. 95, no. 11, pp. 11-14. For a discussion of an earlier experimental model on this subject, see "Preventive Mediation: A Technique to Improve Industrial Relations." Paul Prasow, Labor Law Journal, Commerce Clearing House, Chicago, August 1950, pp. 866-868, 911.

III

MAKING THE RODDA ACT WORK

THE EMPLOYEE'S VIEWPOINT

THE EMPLOYER'S VIEWPOINT

THE PUBLIC'S VIEWPOINT

THE EMPLOYEE'S VIEWPOINT

*Leo Geffner**

The legislative history that was presented by Senator Rodda gives us a pretty clear idea of why we have what appear to be many problems with the bill. Any bill that is a compromise, that is a consensus of competing organizations and competing philosophies between employers and unions which result in unanimous support, is bound to have a great deal of ambiguities and problems and interpretation. One item the Senator mentioned is that a large portion of the bill, particularly the representation section, was really taken out of the original Moscone bill which came out of a long series of compromises between the California Teachers Association and the California Federation of Teachers in the early 1970s who had some conflicting ideas of how collective bargaining should work. That bill was sponsored by the California Federation of Teachers, California Teachers Association, and United Teachers of Los Angeles and was a result of a great number of compromises from the employees' standpoint, and then superimposed on those compromises were the demands of the school board and the administrators that resulted in the final bill.

There are two major impacts that I see as far as the bill is concerned: one, perhaps the most important, is a philosophical impact on employer-employee relations in the schools--and I might say that the classified employees somehow seem to be neglected in this process of discussion. There is so much emphasis and so much impact on teachers, maybe because teachers are used to talking more and louder, that somehow the part of the bill involving classified personnel has been put to the background. I think that the impact on classified employees will be every bit as strong as it is on teachers.

**Attorney, Geffner & Satzman*

Going back to the original concept of the Winton Act--you'll recall that the philosophy behind the Winton Act was that a council represents proportionately all the employees in a district, but teachers primarily. This council receives the input of all of their ideas, and then they sit down with the school board and they meet and confer--not bargain. As a result of this professional relationship of discussion and meeting and conferring by having a consensus of organizations give their input, the school board adopts a rule, a policy that best reflects the input of the employees and the public, and everybody lives happily ever after. That concept has been repealed, and I believe it was a total failure. Everyone conceded that that concept did not work. So the substitute concept that we have is one of full collective bargaining, which means that we have one organization representing all the employees in a unit; that there is bargaining; that there are bilateral agreements that are binding and all of the other aspects that go into a collective bargaining structure.

This is a very basic philosophical difference from what we have had in the past, because the basis of collective bargaining is a confrontation situation, not a consensus concept such as the Winton Act envisioned would occur in the schools. A union that represents the employees, whether teachers or classified, as the exclusive bargaining agent has to negotiate hard and long in order to get the most that it can for the people that it represents.

The school board is now in the position of an employer who has to, in effect, minimize the demands, has to take the amount of money that's available and divide it up between competing interests. Thus you have diametrically opposed positions which may lead to confrontation in bargaining, but hopefully in most cases to a collective bargaining agreement without a strike.

In many cases, of course, you have to end the process by economic action. The school boards are going to have to adapt themselves very drastically to this new concept. The idea of absolute sovereignty--the school board being an elective body that represents the public and therefore can do no wrong as long as they stay in office--is a concept that is incompatible with collective bargaining. There is now a bilateral relationship between a union representing employees and the school board which has to give up many of its sovereign prerogatives and bargain and attempt in good faith to reach an agreement with a labor organization. This is going to take quite a bit of adjustment on the part of school board members, and on the part of administrators and superintendents.

The other impact of the Rodda bill is its effect on the labor organizations, both those representing teachers and those bargaining for classified employees. Now they are going to have to face up to the employees by virtue of having to go through elections, at least in many districts. The rhetoric and the propaganda and the speechmaking that are part of the necessary skills of a labor representative will now be put to a test. Now they have to face up to the employees--if the employees really want that organization or not will be decided by virtue of secret-ballot election. Of course, the positive side for the unions is that they now will have exclusivity. They won't have to worry about minority organizations on a council. They will have the very strong protection of an exclusive dues check-off, and the agency-shop concept of everyone in the unit paying their fair share once it has been negotiated is a very strong positive feature for the labor organizations.

But there is another area of impact that will create some problems for the labor organizations. The labor unions--and I'm as guilty of that as anybody else--have been able to blame the Winton Act on everything that goes wrong in school districts.

They say, we can't bargain; we haven't got exclusivity; we can't get the school boards to sit down and negotiate in good faith--all they do is sit down and meet and confer and do what they want to do with their rules and regulations; all because of the Winton Act, and the blame is easily there to place on the Winton Act and on the lack of collective bargaining. Well, no more. That excuse is no longer there. The unions, once they are recognized, are going to have a very, very heavy responsibility to in effect represent their members and to deliver a collective bargaining agreement that the employees will find satisfactory to live with.

Still another area of impact concerns what is going to happen to Sacramento. As you all know, the Education Code is filled with protective provisions both for teachers and for classified employees, and labor organizations have gone to Sacramento every year with a whole list of improvements and benefits that should become part of the state law and the Education Code. I have a feeling that the legislators are now going to say, "Well, go back to the bargaining table and get it through bargaining and don't bother us so much in Sacramento. We don't want to be bothered anymore with putting in provisions in the Education Code. You wanted collective bargaining all these years. You've got it. Now go back to the table and bargain for it."

Now to some of the immediate problems in the Rodda bill that I foresee from the employee's standpoint that will face all of us in the next few months: The first and I think the most serious problem will be the unit determination question. That problem will have to be resolved eventually by the EERB, the new Education Employment Relations Board. In the certificated employee group there will be some serious problems of what happens to counselors, librarians, nurses, the certificated employees who may or may not be identified as classroom teachers. As you know,

the Rodda bill mandates that all classroom teachers have to be in the same unit, so that has taken care of the problem of having a unit for coaches or a unit for music teachers and that type of fragmentation. But there still are many borderline, twilight classifications that will create some problems as to whether they, e.g., counselors, are classroom teachers so that they have to be in one unit, or whether they can have their own unit. If they are not classroom teachers, will EERB put them in one unit or not?

There will be some very serious problems involving eligibility--which ties in with the unit question--about substitutes in the certificated group and the problem of part time-employees in the classified group. The EERB will have to come up with some guidelines as to when can a substitute, for example, in the certificated group be eligible to vote. Are only long-term substitutes eligible, or can day-to-day substitutes vote? This problem has a tremendous impact on the size of the unit, which in turn will have a tremendous impact on the vote, which in turn will have a great impact on who is the bargaining agent.

In the classified area the problems are more severe, in my opinion, on the unit questions. The Rodda bill has the broad standard that has been developed by the NLRB over the past 30 years, namely, that community of interest will define the appropriate unit, with several other criteria thrown in. Well, there is room for argument all the way from a wall-to-wall classified unit covering teachers aids down to the custodian and the guard or that a stationary engineer or three or four employees should have their own unit. I suspect that the EERB will have some difficult times in determining the units in the classified sector of the schools--and they may very well come up with different criteria depending on the size of the school. I can see the Los Angeles Unified

School District with over 20,000 classified employees being treated differently than one with 100 or 50 classified employees in the entire district. So there will be some serious problems.

The question of supervisors is another one that has to be faced up to very quickly. In the certificated group, I really have a great deal of sympathy for the first time for the principals. They don't know what to do or where to go. The teachers know that they're an employee, that they are going to be represented, the classified employees know. The principals can't make up their minds. Are they going to be management and, therefore, excluded from the act and identify with the superintendent and the school board? Or are they going to be supervisors and, therefore, entitled to have their own unit and to bargain on exclusive representation? I have the feeling that they are going through some tremendous mental tortures right now to decide whether they are management or supervisors, and to all the principals I give my deepest sympathy.

Another immediate problem is the time table of implementing the Rodda bill. The EERB should have been established on January 1, and that allows for three months to hire staff and adopt rules and regulations and begin operations in April 1. That should avoid the problem that has caused the Agricultural Labor Board all kinds of headaches--having to be appointed and begin operating almost immediately after it was appointed. The 3-months period is very constructive, but the April 1st date and July 1st date when all other provisions of the Rodda Act become effective really do not make too much sense from the employees' standpoint, because on April 1, the law gives employee organization, under Sec. 3540, tremendously broad organizational rights: the right to go into schools; the use of bulletin boards; the right to have facilities to hold meetings, to talk to employees; extremely broad organizational rights to

campaign and to organize employees in preparation for an election. That provision becomes effective April 1, but the unfair labor practices provisions become effective July 1!

Now, if you, as a union organizer, are being prevented by the school board from entering a school, you quote the Rodda bill and say, "Well, I've got the right to do this." What does this really mean? The unfair labor practices provision does not become effective until July 1. I have a feeling that we're going to have a lot of activities, perhaps many law suits, perhaps a broadening and testing of the rights under the Winton Act, as little as they may be in trying to protect the organizational activities of labor representatives during this transition, this twilight period.

In the area of bargaining--I could discuss the scope of bargaining for hours, but I must be brief--all I can say about the scope is that this was the big concession to the school boards and to the administrators for their support of the collective bargaining provision. Labor organizations don't like it because it is far too limited; it is in our opinion the weakest part of the bill. But the problem isn't all that serious because anyone who has been involved in bargaining, either in the private sector or in the public sector in the cities and counties and local government, knows that the legal concept of scope of bargaining is really not all that serious of an issue ; there are certain dynamics that flows from bargaining, and if there is a problem involving the employees--whether it is a social worker concerned about the case loads or a teacher concerned about preparation time or a classified employee concerned about a discharge--the union representing those employees will have to go to that bargaining table and bargain on that issue if the employees are that concerned about it. And it does very little good for an employer to sit back and say, "Well, legally and county counsel has told us we don't have to bargain on that issue." That has very little impact on

reality because if the issue is strong enough and the feeling is high enough, the employer is forced by circumstances to bargain about that issue. And whether the approach is by way of consultation as set out in the Rodda bill--you can consult about everything--or by having the board adopt rules and regulations, or whether it is done at the table, it is a pretty safe prediction that anything that really concerns the employees whether they are teachers or classified will be on that bargaining table.

Now, in closing I'd like to talk about the strike issue and the impasse procedures. I agree with Paul Prasow that the mediation provisions are very effective, very constructive. Typically, the legislature avoided the issue of impasse resolution except to provide for mediation and fact-finding. Politically it is impossible for them to face up to the issue of strikes--and I don't know if they ever will face up to that issue--but the law really, I believe, keeps us in the same posture that we're in now. You all know that in districts in which there is a strong organization, if there is an economic problem in terms of the inflationary economy and a need for higher salaries and there isn't enough money in the budget, you are going to have strikes. Such situations will cause strikes throughout the country; we have had strikes under the Winton Act and I really don't see any difference in how that will function under the Rodda bill.

THE EMPLOYER'S VIEWPOINT

*Lee T. Paterson**

The Rodda Act has been variously characterized in the State in the last three months as:

a magna carta for teacher power,

a panacea for strikes,

a bill of rights for school employees,

a management employer relations bill,

a teacher collective bargaining bill,

the start of professional control of the schools,

the spreading tenacles of communism and socialism,

a bill to control employee power, and

the end of the problem of teacher militancy.

I have no problem with those characterizations except for the fact that many times these claims are made in exactly the same speeches to exactly the same audience and sometimes exactly by the same person.

From a management viewpoint the Rodda Act is a number of things. First, it is an opportunity for change. Employee relations under the Winton Act have become increasingly unstable in the last few years. The number of districts that have reached agreements in the last year that have been forced to reopen their meet-and-confer process because of the passage of additional school finance legislation is legion. The number of districts in the

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**Attorney, Paterson & Taggart*

State that have reached an agreement this past year with one employee organization only to turn around and have to try to reach an agreement with a new employee organization that has just organized the employees of the district is also large. In one school district that we represent, we have five employee organizations all claiming to represent the same classification of employees. In another school district that we represent, the board's representative went through sixteen months of continuous negotiations, reached agreement in April for last year's salary schedule, and then sat down exactly the next day after the board had adopted the agreement and started the negotiations for this year's salary schedule.

The Rodda Act gives us an opportunity to solve some of those problems. It gives us a binding agreement. It gives us, hopefully, one employee organization for any given class of employees, and it gives management the chance to negotiate a Conclusiveness of Agreement Clause that will limit the negotiation process to the time just preceding the contract and resort during the term of the contract to consultation and grievance and arbitration procedures.

Second, the Rodda Act is an opportunity to change the scope of recognition problems. Since the Yuba City and San Juan cases, school employers in the State of California have been inundated with numerous requests to meet and confer about any problem that exists in the school district. We have had requests to meet and confer about the length of school board meetings. We have had requests to meet and confer about the boundaries of the school district. We have had requests to meet and confer in one strike in the State over the tax rate to be levied by the board of education, and we have had requests to meet and confer about the amount of money the board was going to be paid for attending its own meetings; putting teacher organizations in the unique position of representing the board for purposes of salary and fringe benefits.

The Rodda Act's definition of representation is that it will be limited to matters relating to wages, hours of employment, and other terms and conditions of employment, and then, as you know, the Act goes on and defines those terms and conditions of employment. It again says all matters not specifically enumerated are reserved to the public school employer. The Rodda Act gives an opportunity to change the board's definition of the scope of meet-and-confer.

Finally, the Rodda Act provides an opportunity for a change in the negotiating process. I am reminded of the employee organization this past year that made a demand for salary increase of 9 percent. The board representative offered 5 percent; the teachers' organization said, no, we'll take 9 percent, so the board's representative quite unwisely offered 6 percent; the teachers' organization said, no, we're going to take 9 percent and the board's representative, again unwisely, not learning from the past, offered 7 percent. At which point the teachers' organization declared persistent disagreement because of the board's continued bad faith.

I am also unfortunately aware of a board that within the last couple of years unilaterally adopted a salary schedule, then demanded factfinding under Section 13087.1 of the Winton Act, and then took a public position that no matter what the factfinder said the board wasn't going to change its position anyway.

One definition of collective bargaining which has been used for a long time is that collective bargaining is "a method by which management and labor may explore others' problems and viewpoints and develop a framework of employment relations within which both may carry on their daily association in a spirit of cooperative good will and for their mutual benefit." The Rodda Act

gives us the chance to achieve that definition of negotiation or collective bargaining. To help in that process the Act has established an Employer Relations Board, which I personally believe is a long-overdue event in employee relations in the State of California.

The Rodda Act sets a challenge to both management and labor employee organizations in the meet and negotiation process. Unfortunately, at the same time, it does nothing to solve the major problems of education--school finance, inequitable educational opportunity, and local control of the schools. It will provide a challenge to both employers and employee organizations to find a method which meets the needs of the parties, yet, I hope, protects the public interest. In the last fifteen years, employer-employee relations in government and in the public sector have been characterized by cynicism. To suggest that public officials or public employees are public servants is a sure way to be classified as a "Pollyanna," and iconoclast, or a fool. A sure way to get a laugh at the negotiating table for either party is to ask such questions as, "What about the kids?", "Where will we get the money?" and "What will the taxpayers say?". Fortunately the attitude of the public is changing in that regard. The problems of New York have touched every public jurisdiction in the United States. Few public officials or labor organizations are unaware of a change in the attitude of the public in the United States and, if the problems of New York are not a bellwhether for the problems of California, then certainly the San Francisco referendum is such a bellwhether.

Management and employee organizations have a clear challenge. We have to keep school districts responsive to community needs; we have to keep school districts solvent in spite of financial crises; and we have to keep school districts on their primary responsibility which is the education of children.

The Rodda Act also offers a challenge to management and employee organizations in that it imposes concepts on districts and employee organizations which were outmoded forty years ago in the private sector. An oft-quoted phrase from Santayana that you have heard many times is "those who don't learn from history are doomed to repeat it." In a number of ways we are doomed to repeat the problems of history in the private sector.

In my opinion, the most critical of those is the supervisory inclusion of employees in the meet-and-negotiation rights under the Rodda Act. Forty years ago, the National Labor Relations Act was worded in such a way that the National Labor Relations Board decided supervisors had bargaining rights, and that the board of directors of a private company had to sit down and bargain with their supervisors. Twelve years later, Congress changed that law to take away the bargaining rights of supervisors, on the grounds that effective employer-employee relations require a balance between employers and employee organizations and part of that balance is an effective group of management or supervisory employees not represented by employee organizations.

A second problem under the Rodda Act is the quest for concession at the negotiation table. Forty years ago, the National Labor Relations Board had a definition of "good faith" that held that employers who refused to agree to arbitration had per se violated the Act; that employers who refused to agree to union shop, closed shop or agency shop had per se violated the Act; and that employers who demanded reimbursement for strikes by the union had per se violated the Act. The basis for this was that the employer in the negotiations process was required to make a concession, and was required to reach agreement. Twelve years later, Congress stepped in and changed that law to provide a definition of collective bargaining that states, "To bargain collectively is

the performance of the mutual obligation of employers and representatives of the employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment, but such obligation does not require either party to agree to a proposal or to make a concession." There is nothing in the Rodda Act which gives us that definition or the protection of the National Labor Relations Act. Primary in any labor relations system is the understanding that any deal worked out by the parties is better than a deal imposed by an outside force. Both management and labor have a challenge in front of them to keep the Educational Employee Relations Board from dictating to both parties what concessions and agreements they must reach at the table to be "in good faith."

Third, in the late 1930s the National Labor Relations Board held that an employer must maintain strict impartiality and silence in dealing with employee organizations and that any statement for or against an employee organization was an unfair labor practice under the National Labor Relations Act. In 1940 the Supreme Court held that employers are not deprived of their free speech rights under the Constitution, and held that employers had the right to use free speech and make statements about employee organizations in regard to the management's employee relations. In 1947 Congress put the seal on that Supreme Court decision by passing a law which said, "The expressing of any views, argument or opinion or the dissemination thereof, whether in written, graphic or visual form, shall not result in or be evidence of an unfair labor practice under any of the provisions of this Act if such expression contains no threat or reprisal of force or promise of benefit." There is nothing in the Rodda Act which protects management's right of free speech, and in fact it is a specific unfair labor practice for management to express a preference between organizations.

Fourth, Section 3544.1 of the Rodda Act provides that the public school employer shall grant a request for recognition filed pursuant to Section 3544 unless a challenge to the appropriateness of the unit has been filed by another employee organization. There is nothing in the National Labor Relations Act or, so far as I can find, any other act in the United States which provides that an employee organization which represents one or two employees of the public school employer has the right to step into a unit determination process, block that process, and force a decision by an Employee Relations Board. Yet, that provision is contained in the Rodda Act and, I think, in the near future is going to provide an intense amount of litigation before the EERB. Why it is in there I have no idea, but it will be undoubtedly the section of the Act which provides full employment for every business agent and labor attorney in the State of California.

In conclusion, the Rodda Act is neither a panacea nor a poison. It is neither a management bill nor a labor bill. It is neither a solution nor a cause. It is neither the beginning of a brave new world nor the end of a glorious era. The Rodda Act is quite simply the opportunity for change and a challenge to employers and to employee organizations.

THE PUBLIC'S VIEWPOINT

*John L. Bukey**

I am pleased to have the opportunity to present my viewpoint of SB 160 from the perspective of the public. Let me first say that the bill is more than simply the mandating of collective bargaining for public school employees and employers. It is, in addition, the establishment of an ongoing process through which problems associated with the negotiations process can be solved. An integral part of the bill is the establishment of the Educational Employment Relations Board, which is empowered to make a wide variety of decisions that will fill in and flesh out the statute and resolve various ambiguities. It, therefore, is very important to be involved in the processes of the board.

I have been asked to look at the bill from the public perspective. This is an unusual assignment in that collective bargaining is normally viewed as a bilateral process--a bargaining relationship between the employee organization on the one hand and the employer on the other. Not even in the coldest industrial bargaining context is the interest of the public absent - ignored perhaps, but present.

One caution, however: when we are speaking of "the public," we are not being precise because there are several publics involved--not only one. I can identify four: (1) the parties to the bargaining relationship themselves, (2) affected pupils, (3) affected parents, and (4) the so-called general public which, in my view, is the community in which the school district is located.

Leo Geffner and Lee Paterson have adequately covered the interests of the parties themselves. I will concentrate on SB 160 as it relates to the remainder of the publics.

**Consultant to the Senate Education Committee, California State Legislature*

The first interest that I would identify is the interest the community has in the stability of the employer-employee relationship itself. This focus applies equally to all of the publics. I was interested to learn that the State of Illinois has no organized process through which collective bargaining for public employees occurs. Nonetheless, Illinois has collective bargaining just as surely as if there had been a statute in existence for some time. In other words, the advent of bargaining occurred in an ad hoc fashion without the benefit of an orderly process. Commentators on the Illinois situation indicate that it is now almost impossible to conceive of a state statute and an organized process because it would involve too much compromise by all of the various parties. Hence, the confusion that exists in Illinois will continue into the future.

The Rodda bill attempts to provide a framework in which bargaining can proceed in an intelligent and coordinated fashion. Therefore, the features of the bill promote stability that contributes to the public's interest by (1) reducing the possibility of work stoppages based on inadequate procedures, (2) providing happier employees and thereby more productive ones, and (3) relieving school management of the need to be constantly involved in bargaining.

Features of the Rodda bill that promote this stability in employer-employee relations are (1) the favoring and encouragement of elections, (2) the existence of an election and contract bar, (3) the designation of unfair labor practices on both sides and the provision of an enforcement mechanism, and (4) a well-defined impasse mechanism, somewhat at public expense. In this regard, we stop short of ultimate stability because the bill does not provide for either binding arbitration of interest disputes or the strike. There are those who feel that stability would be further improved if one or

both of these mechanisms were permitted, but this is not the case in the legislation. The bill does, however, provide for the authorization of a grievance machinery, and overseeing by the Educational Employment Relations Board, a feature that I mentioned earlier.

The general public has an interest in the efficient operation of the school system, that is, the most productivity at the lowest cost. This interest, in my view, is adequately protected by the school board, which is elected by the general public. I only raise this point as a contrast to the interest of parents and pupils.

Parents and pupils have special interests in the schools in that they have an interest in the *educational program*, an interest that goes deeper than that enjoyed by the public at large. Their interests cannot be fully protected by the school board because the board's first responsibility is to the community at large. The interests of parents and pupils are not fully protected by SB 160, nor were they fully protected under other negotiating processes such as the Winton Act, although some attempts have been made to provide for this concern. The features of the bill that protect the interests of parents and pupils are (a) the limitation of scope and the provision of a special non-exclusive right to the exclusive representatives of certificated employees to consult on various educational issues; (b) the continuation of the provisions of AB 4114 (Vasconcellos) that give parents and pupils the right to know of the subjects that are being discussed in the privacy in the bargaining-room relationship and to have input into those issues; and (c) the prohibition of binding arbitration of interest disputes.

This is a brief overview of the protections afforded the public interests under SB 160. I might close by indicating that the whole State of California has an overriding interest in this measure.

Their interest is that it will, in fact, provide an effective mechanism through which employer-employee relations can be accomplished in a peaceful and an intelligent fashion. It is up to you to make it work.

IV

UNDERSTANDING THE RODDA ACT

ANALYSIS OF THE STATUTE

STATUTORY DEFINITIONS

GLOSSARY OF SELECTED TERMS

ANALYSIS OF THE STATUTE

Paul Prasow

Introduction

The recent passage of the Rodda Act governing employer-employee relations at the elementary and secondary levels in the public school systems, including community colleges, adds California to the growing list of states which now provide similar legislation for their public school employees.

It is important for all those in California public education to understand the scope and ramifications of such laws. Public school management at all levels, certificated and classified personnel, and officials of employee organizations, face a demanding task in adjusting to the many important changes that the Rodda Act will bring about in the next few years.

The Act contains many complex provisions setting forth basic rights, duties, obligations, and responsibilities for all parties covered by the statute. Some of the provisions are couched in unavoidably ambiguous language which can be clarified through promulgation of rules, regulations, and interpretations by the Educational Employment Relations Board, by the courts, and by the parties themselves.

The analysis and breakdown of the Rodda Act that follows is one attempt to aid the parties in their task of meeting its many new requirements.

Purpose

The basic purpose of the Rodda Act is to improve employer-employee relations and personnel management within the California public school systems. This objective is to be achieved by:

1. providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice;

2. being represented by such organizations in their professional and employment relationships with public school employers;

3. selecting one employee organization as the exclusive representative of the employees in an appropriate unit; and

4. affording certificated employees a voice in the formulation of educational policy.

Employee Coverage and Exemptions

The Rodda Act applies to employer-employee relations and personnel management in all California local public school districts, community college districts, county departments of education, and their governing boards or officers. The Act covers both certificated and classified employees (K-14), except for management and confidential employees.

Dates of Implementation

Governor Edmund G. Brown Jr. signed the Act on September 22, 1975. The entire Act does not become finally effective, however, until July 1, 1976. The critical dates are:

January 1, 1976	The Educational Employment Relations Board (EERB) became effective on that date. It is composed of three members who have been appointed by the Governor with the advice and consent of the State Senate. They are: Reginald Alleyne, Professor of Law, UCLA, who will serve as chairman; Dr. Ray Gonzales, former State Assemblyman from Bakersfield; and Jerilou Cossack, former supervising examiner Region 31 of the NLRB.
April 1, 1976	Provisions relating to the organizational rights of employees, the representation rights of employee organizations, and election and certification procedures become operative.
July 1, 1976	On this date the Winton Act is completely replaced by the Rodda Act. The Winton Act remains in effect until July 1, 1976.

Administration

Educational Employment Relations Board

The most important feature, perhaps, of the Rodda Act is the establishment of an administrative agency, the Educational Employment Relations Board (EERB), to effectuate the policies and procedures of the statute. The EERB is to the Rodda Act what the National Labor Relations Board (NLRB) was to the Wagner Act. Board members are to be appointed by the Governor no later than January 1, 1976, and confirmed by the State Senate. Terms of the original three members are staggered: one year, three years, and five years. All re-appointees serve for five years, except an appointee filling a vacancy serves only for the unexpired term of the member being succeeded. Board members are eligible for reappointment. The Governor appoints the chairperson, and may remove any member of the board for neglect of duty or malfeasance in office. A quorum consists of any two members of the board. Board members are not permitted to hold any other public office and may not receive any other compensation for services rendered beyond their annual salaries of $36,000.00.

The board appoints an executive director and other persons deemed necessary to perform its functions. The executive director must be familiar with employer-employee relations. The board may also employ an independent general counsel to represent it in litigation.

Powers and Duties of the Board

Among the most important powers and duties of the board are:

a. To determine appropriate units and to approve appropriate units in disputed cases.

b. To decide whether a disputed matter is within the scope of representation.

c. To conduct secret ballot representation elections and to certify the results.

d. To establish lists of qualified persons to serve as mediators, arbitrators, and factfinders.

e. To conduct studies on employer-employee relations, make wage surveys, gather data on fringe benefits and employment practices in the public and private sectors and recommend needed legislation. The board may also arrange for research and training programs to assist public employers and employee organizations. The board is required to submit an annual report to the State Legislature by February 15 of each year on its activities during the preceding calendar year.

f. To adopt appropriate rules and regulations to effectuate the purposes and policies of the Act.

g. To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, issue subpoenas, and require the production of records, books, or papers relating to any matter within its jurisdiction.

h. To investigate unfair labor practice charges or alleged violations of the Act.

i. To petition a court to enforce its orders, decisions, or rulings. Upon issuance of a complaint charging that any person has engaged in an unfair labor practice, the board may petition the court for appropriate temporary relief or restraining order.

j. To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions. No fewer than two board members may participate in any ruling or decision on the merits of any dispute coming before it. A refusal to issue a complaint requires the approval of two board members.

k. To decide contested matters involving recognition, certification, or decertification or employee organizations.

l. To decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

The Act stipulates that any person who interferes with the functions of any member of the board, or any of its agents, may be guilty of a misdemeanor and can be fined up to $1,000.00.

Employee Organizations:

Representation, Recognition,

Certification, And Decertification

Request for Recognition

A public school employer may voluntarily recognize an employee organization as the exclusive representative for employees of an appropriate unit if the organization has filed a request for such recognition. The request must show that a majority of employees in an appropriate unit wish to be represented by such organization.

The employee organization must describe the grouping of jobs or positions which constitute the claimed appropriate unit and must include proof of majority support on the basis of:

a. current dues deduction authorizations
b. notarized membership lists
c. membership cards
d. petitions designating the organization as the exclusive representative

Once recognition is requested, notice of such request must be posted immediately and conspicuously on all employee bulletin boards in each employer facility in which members of the unit claimed to be appropriate are employed.

Refusal of Recognition

The employer may refuse voluntarily to grant a request for recognition if:

1. He desires that a representation election be conducted or doubts the appropriateness of a unit. If the employer desires a representation election, he must notify the board which then may conduct a representation election;

2. Another employee organization either challenges the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of the original notice for recognition. The competing claim must also be supported by evidence regarding current dues deduction, authorizations, notarized membership lists, membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the intervening organization. An election must be held if the intervening organization can show support of at least thirty (30) percent of the members of an appropriate unit;

3. There is currently in effect a lawful written agreement with another employee organization covering any employees included in the unit described in the recognition request, unless recognition is requested within the period of less than 120 days, but more than 90 days prior to the expiration of the agreement;

4. If within the past 12 months, the employer has legally recognized another employee organization as the exclusive representative.

Representation Election

If, by January 1 of any school year, no employee organization has claimed majority support, then a majority of employees in an appropriate unit may petition the employer for an election provided the petition is signed by a majority of employees of an appropriate unit. An employee may sign such a petition even though not a member of any employee organization. After the petition is filed, the employer must post the notice of request on all employee bulletin boards at each school or other facility in which members of the unit are employed.

Any employee organization has the right to appear on the ballot if, within 15 workdays after the posting of such notice, it provides a thirty (30) percent showing of interest. At the end of the 15-day period following the notice, the employer must transmit to the board the petition and the names of all employee organizations that have the right to appear on the ballot.

The board is required to determine the appropriate unit or decide a question of exclusive representation if:

1. The employer doubts the appropriateness of the claimed unit;

2. An employee organization claims it has requested recognition as exclusive representative and the request has been denied by the employer or has not been acted upon within 30 days after filing the request;

3. An intervening employee organization claims it has filed a competing claim of representation;

4. An employee organization claims that the employees in an appropriate unit no longer desire a particular organization as their exclusive representative.

   The intervening organization must show that its petition is supported by current dues deduction authorizations, notarized membership lists, membership cards, or petitions from 30 percent of the employees in the unit indicating lack of support for the incumbent exclusive representative.

Conduct of Elections and Certifications

If the board finds that a representation question exists, it is required to decide such question by investigation or hearings. If the board cannot decide the matter in the course of its own investigation, it must conduct a secret-ballot election and certify the election results on the basis of which ballot choice received a majority of the valid votes cast. All ballots must contain a "no-representation" option, and the voter may not record more than one choice on his/her ballot; if so, that ballot is void and may not be counted. If none of the options on the ballot receives a majority of the votes cast, a runoff election must be conducted. The ballot for the runoff election must provide for a selection between the two choices that received the largest and second largest number of valid votes cast in the first election. The employee organization which receives a majority of the valid votes cast in a runoff election is then entitled to certification by the board and exclusive recognition by the public school employer.

No Elections Permitted

Elections are prohibited and petitions for such elections must be dismissed whenever:

a. There is currently in effect a lawful written agreement negotiated by the employer and another employee organization covering any employees included in the unit, or unless the request for recognition is filed less than 120 days but more than 90 days, prior to the expiration of the agreement;

b. The employer has within the previous 12 months legally recognized an employee organization other than the petitioner as the exclusive representatives of employees included in the unit.

Rights And Obligations Of Public School Employees And Their Organizations

To Join or Not to Join

Public school employees have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. They also have the right to refuse to join or participate in such activities and to represent themselves individually in their employment relations with the employer. However, once the employees have selected an exclusive representative and it has been legally recognized or certified, no employee in that unit may meet and negotiate individually with the employer.

Presenting Individual Grievances

Any employee may at any time present grievances to his/her employer, and have such grievances adjusted without the intervention of the exclusive representative, as long as the adjustment is reached prior to any agreed upon arbitration procedures. Adjustment of such grievances may not conflict with the terms of a current written agreement. The employer must withhold settling the grievance until the exclusive representative has a copy of the grievance as well as the proposed resolution, and is given an opportunity to respond.

Representation of Members

Employee organizations have the right to represent their members in their employment relations with the employers except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit, only that organization may represent that unit in its employment relations with the employer. The employee organization may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

Employee organizations must be given access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of rights guaranteed by the Act.

A reasonable number of representatives of an exclusive representative have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating with the employer and for the processing of grievances.

Dues Deduction

Employee organizations have the right to have membership dues deducted pursuant to relevant sections of the Education Code. However, once an organization is recognized as an exclusive representative for employees in an appropriate unit, then deductions as to any employee in that unit are not permissible except to the exclusive representative.

Duty of Fair Representation

Any employee organization recognized or certified as the exclusive representative must "fairly represent each and every employee in the appropriate unit."

Unfair Practices

The employer may not:

a. Impose reprisals on employees, discriminate against, restrain, or coerce employees because of exercise of their rights.

b. Deny rights to employee organizations guaranteed by the Act.

c. Fail to meet and negotiate in good faith with an exclusive representative.

d. Dominate or interfere with the formation or administration of any employee organization, contribute to, or encourage employees to join any organization.

e. Refuse to participate in good faith in the prescribed impasse procedures.

The employee organization may not:

a. Cause or attempt to cause a public school employer to commit unfair labor practices.

b. Impose reprisals on employees, discriminate against, interfere with, restrain, or coerce employees because of exercise of their rights.

c. Refuse or fail to negotiate in good faith.

d. Refuse to participate in good faith in the Act's impasse procedures.

How Are Unit Determinations Made?

The board must decide questions of appropriate unit on the basis of the following criteria:

1. community of interest among the employees;
2. previous established practices, including:

   a) the extent to which such employees belong to the same employee organization,

   b) the effect of the size of the unit on the efficient operation of the school district.

Restrictions on Negotiating Units: Some Examples

1. A negotiating unit that includes classroom teachers must include all the classroom teachers employed by the public school employer, except management employees, confidential employees, and supervisory employees.

2. A negotiating unit of supervisory employees must include all supervisory employees employed by the district, and they may not be represented by the same ogranization which represents employees whom the supervisors supervise.

3. Classified employees and certificated employees may not be included in the same negotiating unit.

Judicial Review

A unit determination made by the board is not subject to judicial review unless (a) the board joins a request for such review; or (b) when the issue is raised as a defense to an unfair practice complaint. Board decisions in an unfair practice case are subject to court review unless the board declines to issue a complaint.

The board may seek court enforcement of any of its decisions. Board findings on question of fact, if supported by substantial evidence, are conclusive. A court decision on a board order may be appealed to a higher state court.

Scope of Representation (Negotiations)

The scope of representation under the Rodda Act is divided into three main categories.

1. Mandatory subjects of representation are limited to matters relating to wages, hours of employment, and other terms and conditions of employment.

   "Terms and conditions of employment" are expressly defined to mean:

   a. Health and welfare benefits
   b. Leave and transfer policies

c. Safety conditions of employment
d. Class size
e. Procedures used for employee evaluation
f. Organizational security
g. Procedures for processing grievances

2. Consultative - The exclusive representative of certificated personnel may *consult* on:

   a. Definition of educational objectives

   b. Determination of course content and curriculum

   c. Selection of textbooks (subject to legal limitations)

3. Employer Reserved Rights - All matters not specifically enumerated are reserved to the employer and may not be a subject of meeting and negotiating. However, nothing in the definition of scope of representation may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

   A public school employer or a designated representative who may, but need not, be subject to either certification or requirements for classified employees shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

Grievance Procedures And Arbitration

1. Negotiated agreements *may* provide for final and binding arbitration of disputes involving the interpretation, application, or violation of the agreement.

2. If the negotiated agreement does not provide for final and binding arbitration, the parties may submit a grievance dispute to final and binding arbitration pursuant to board rules.

3. If a party refuses to proceed to grievance arbitration pursuant to a negotiated agreement or pursuant to board rules, the other party may petition a court to direct arbitration pursuant to appropriate procedures and/or rules.

4. An arbitration award made pursuant to agreed upon procedures or board rules is final and binding upon the parties and may be enforced by a court.

Public Notice

The public notice section is intended to give the public an opportunity to express its views on the issues in negotiations. To carry out this intention, the Act provides that:

a. All initial proposals within the scope of representation must be presented at a public meeting of the employer and be made part of the public records.

b. Negotiations must be delayed for a reasonable time until the public has had an opportunity to express its views on the proposals at a meeting of the public school employer.

c. After the public has expressed its views, the employer is required to adopt its initial proposals at a public meeting.

d. Any new subjects of negotiations must be made public within 24 hours. If the employer votes on a subject, each member's vote must also be made public within 24 hours.

Negotiation Impasse Procedures

A. Mediation

Either party to a bargaining dispute may declare an impasse and ask the board to appoint a mediator. If the board finds that an impasse exists, it must appoint a mediator who is required to meet with the parties either jointly or separately and to take whatever steps deemed necessary to produce a mutual agreement.

The mediator's fees and expenses are paid by the board without cost to the parties. The parties are free, however, to agree on their own mediator, in which event the costs are shared equally.

If the mediator cannot resolve the controversy within 15 days after his/her appointment, and declares that factfinding is appropriate, either party may request that their differences be submitted to a factfinding panel.

B. Factfinding

If the impasse goes to factfinding, the following procedure is required:

1. Each party selects one member of the fact-finding panel and the board appoints the chairperson who may be the same person who served as the mediator unless the parties object.

2. The panel holds hearings within ten days after its appointment and takes whatever steps are appropriate to investigate the dispute. The panel may request information from a variety of governmental and educational agencies, including any board of education.

3. Within 30 days (or longer if agreed to by the parties), the panel must submit to the parties its findings and recommendations based upon the following criteria:

   a. Applicable state and federal laws.

   b. Stipulations of the parties.

   c. The interests and welfare of the public and the financial ability of the public school employee-employer.

   d. Comparison of the wages, hours, and conditions of employment of the employees performing similar services, and with other employees generally in public school employment in comparable communities.

   e. The consumer price index for goods and services.

   f. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

   g. Such other facts, not confined to those specified above, which are normally considered in making such findings and recommendation.

4. The panel's findings and recommendations are not binding and must be submitted privately to the parties before being made public. The employer must make them public within 10 days. The board pays the cost and expenses of the panel chairperson, but other mutually incurred costs are divided equally between the parties who also pay for the services of their respective panel members.

C. Mediation Resumed

The mediator appointed prior to factfinding may continue mediation efforts after the factfinding stage on the basis of the recommendations of the factfinding panel. Thus, the mediator may engage in three different levels or stages of mediation: (a) prior to factfinding; (b) during factfinding - as chairperson; and (c) subsequent to factfinding. This procedure seems to recognize the crucial role of the mediator in resolving negotiation impasses.

Strikes

Enactment of the Rodda Act may not be construed as making Section 923 of the Labor Code applicable to public school employees. Section 923 of the Labor Code states in part that employees may engage in ". . . concerted protection." It is important to note, however, that neither the court nor the board may hold invalid any negotiated agreement entered into between the employer and exclusive representative as a result of a strike.

Exemptions From Open Meeting Acts

Unless the parties agree otherwise, the following procedures are exempt from the Ralph M. Brown Act* and the Bagley Act:**

a. Meetings and discussions between the parties

b. Meetings of a mediator with either or both parties

*The Ralph M. Brown Act requires open meetings for all local government agencies including school boards.

**The Bagley Act requires open meeting for all state agencies.

c. Hearings, meetings, or investigations conducted by a factfinder or arbitrator

d. Executive sessions of the local school board and its representatives involving its position on any matter within the scope of representation and instructing its designated representative.

STATUTORY DEFINITIONS

The statute contains many definitions, the most important of which are:

1. A certified organization is one certified by the board as the *exclusive representative* of a group of public school employees in an appropriate unit.

2. Confidential employees are those who, in the regular course of their duties, have access to, or possess information relating to employer-employee relations of the public school employer. (The Rodda Act provides that any person serving in a management or confidential position shall not be represented by an exclusive employee organization. A person in such a position, however, has the right to represent him/herself individually or to be represented by an employee organization whose membership is composed entirely of employees holding the same positions; but such an organization does not have the right to meet and negotiate with the employer.)

3. An employee organization is any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that employer.

4. Exclusive representative means that the certified or recognized employee organization is the *exclusive representative* of certified or classified employees in an appropriate unit.

5. Good faith negotiations. Both parties have a duty to meet and negotiate in good faith. They must begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of the adoption date, so that there is adequate time for an agreement to be reached or for the resolution of an impasse.

6. Impasse means that the parties have reached a point in meeting and negotiating on matters within the scope of representation where future meetings would be futile.

7. Management employees are excluded from the Act; the term refers to any employee having significant responsibilities for formulating district policies or administering district programs. Management positions are designated by the public school employer subject to review by the board.

8. Meeting and negotiating means meeting in good faith and negotiating between an exclusive representative of the employees and of the public school employer in an effort to reach agreement on matters within the scope of the representation. Either party may request that all agreements be reduced to writing in a signed document binding on both parties.

9. Public school employee means any person employed by any public school employer except persons elected by popular vote, those appointed by the Governor, and management and confidential employees.

10. Public school employer means the governing board of a school district, a county board of education, or a county superintendent of schools.

11. Supervisory employees - not to be confused with management or confidential employees - refer to anyone who, regardless of his/her job description, has the authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances or effectively recommend such action. The exercise of such authority must involve independent judgment and not be merely of a routine or clerical nature.

Supervisory employees may have a negotiating unit, but it is an appropriate unit only if it includes all supervisors employed by the district, and it may not be represented by the same employee organization whose members the supervisors have authority to supervise. Classified employees and teachers may not be included in the same unit with supervisors.

12. Organizational security means:

(1) A maintenance-of-membership arrangement in which an employee who decides to join the employee organization must maintain his/her membership in good standing for the duration of the agreement as a condition of continued employment. Such employee also has the right to withdraw his/her membership during a 30-day period after expiration of the written agreement. Under a maintenance-of-membership provision, no one is required to join the organization, nor do new employees have to join. However, once a decision is made to join the organization, membership must be maintained until the agreement expires.

(2) An agency shop whereby, as a condition of continued employment, an employee must either join the recognized/certified employee organization or pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments. The service fee must be paid for the duration of the agreement or for a period of three years from the effective date of such agreement, whichever comes first.

An organizational security provision may be effective only if agreed upon by both parties. The employer may request that the provision be severed from the rest of the proposed agreement and be voted upon separately by all members in an appropriate unit. The provision may become effective only if a majority of those in the unit vote to approve such an arrangement. The vote has no bearing on other provisions of the proposed agreement.

An organizational security arrangement may also be rescinded by a majority vote of the employees in the negotiating unit in accordance with board rules and regulations.

Recognized or certified employee organizations must maintain accurate records of all financial transactions and each year must submit to the board and to members of the employee organization (within 60 days after the end of its fiscal year) a balance sheet and an operating statement certified by a professional accountant.

GLOSSARY OF SELECTED TERMS

1. Arbitration	A procedure essentially judicial in nature whereby parties submit an issue in dispute to a neutral third party for a final and binding decision.
2. Authorization Card	A means by which employees within a prospective unit indicate their desire to be represented by a particular organization as their bargaining representative. An integral part of the recognition and certification process.
3. Bargaining Unit, appropriate	A unit is a group of employees recognized by the employer, or designated by an agency, as appropriate for representation by an employee organization for purposes of bargaining. The bargaining unit need only be an appropriate unit, not necessarily the most appropriate unit where there is an identifiable community of interest among the employees in that unit.
4. Certification	Legal confirmation by an employment relations board of the employee organization as the exclusive representative of employees in an appropriate unit. The existence of a certified exclusive representative does not prevent an individual employee from taking up a grievance, the resolution of which may not conflict with the terms of a lawful collective agreement.

5. Charge, unfair practice	An allegation that either an employer or an employee organization has violated one of the proscriptions listed in the law, either by specification or implication, as being incompatible with the practice of bargaining in good faith.
6. Checkoff	By agreement of the parties, the employer witholds from the paycheck of an employee and transmits to the exclusive employee organization the designated dues.
7. Collective Bargaining	A process whereby the parties engage in collective bilateral determination of matters within the scope of negotiations. (Neither party is required to agree to, or to make any concessions regarding any individual proposal of the other.)
8. Consent	A process whereby the employer and the employee organization may jointly either delineate the appropriate unit or officially designate an exclusive employee representative without external intervention.
9. Consent Election	An election held by an employment relations board after informal proceedings in which the parties have agreed on the conditions, provisions, and implications of the election.
10. Contract	The written instrument embodying the agreed upon terms and conditions of employment.

11. Contract Bar	The existence of a written agreement with an incumbent employee organization acts as a bar to a representation challenge by a competing employee organization.
12. Decertification	The revoking of the certification of an exclusive employee organization either by an election or by an action of the employment relations board.
13. Employer Reserved Rights	All matters not specifically enumerated in the Act are reserved to the employer and may not be a subject of meeting and netotiating.
14. Escape Period	A period (usually 30 days) under a maintenance-of-membership arrangement during which a member may resign from the exclusive employee organization.
15. Exclusive Representative	The legal right granted the designated bargaining agent to be the sole representative during the period of recognition or certification of all employees in the unit on all matters within the scope of negotiations.
16. Factfinding	A form of impasse resolution in which a third party or a panel reviews matters under dispute, attempts to ascertain the facts regarding them and makes non-binding recommendations as to possible settlement consistent with those facts.
17. Fringe Benefits	Economic items negotiated in the agreement which benefit the employees and represent costs to the employer, but do not put dollars directly into the pocket of the employee; i.e., health and welfare benefits.

18.	Grievance	An allegation by an employee or by the exclusive representative that the employer or one of its agents has misapplied, misinterpreted, or violated one or more specific provisions of the collective agreement. Tenure or a merit system in the Education Code are excluded from negotiations.
19.	Initiation Fee	The fee required by an employee organization as a condition preliminary to granting membership.
20.	Injunction	An order by a court to perform or to cease to perform a specific activity.
21.	Interest Impasse (See also Rights Impasse)	Arises over the negotiation or modification of the terms of a collective agreement. An interest impasse concerns unresolved issues in contract negotiations. The Rodda Act provides for mediation and factfinding to resolve such impasses.
22.	Judicial Review	The means by which a court of appropriate jurisdiction reviews, modifies, or enforces the actions or findings of an employment relations board.
23.	Management Rights Clause	That part of the law or negotiated agreement that expressly reserves to management certain rights, privileges, responsibilities and authority requisite to the conduct of the facilities.
24.	Mediation (conciliation)	Efforts by a neutral third party to bring about the resolution of issues in dispute through a voluntary settlement. The terms mediation and conciliation are generally used interchangeably. The mediator (conciliator) has no authority to decide any of the issues in dispute.

25.	Recognition, Direct	The employer may voluntarily recognize an employee organization as the exclusive representative for employees of an appropriate unit if the organization has filed a request for such recognition. The request must show that a majority of employees in an appropriate unit wish to be represented by such organization.
26.	Representation Election	An election conducted by an employment relations board to allow employees within an appropriate unit to express their choice among organizations showing a legitimate evidence of interest in being the exclusive representative for that unit. The ballot also includes the option of no representation.
27.	Rights Impasse (See also Interest Impasse)	Arises during the term of a written agreement and involves the interpretation and/or application of the agreement. The Rodda Act permits the parties to negotiate arbitration of rights impasses where a decision of the arbitrator is final and binding on all parties concerned.
28.	Runoff Election	A subsequent election required when, in the representation election, no single choice achieves a majority vote among those voting. The choice in the runoff election is between those two options which received the highest number of valid votes in the representation election.
29.	Scope of Consultation	The exclusive representative may consult, but not negotiate, on such matters as: educational objectives, course content and curriculum, and textbook selection.

30. Scope of Negotiation	The limits of the appropriate subject matters of bargaining as set by law or determined by the parties during negotiations.
31. Service Fee	An assessment of all employees in an appropriate unit, or of all those in the unit who are not members, to defray costs for services rendered by the exclusive employee representative in the negotiation and implementation of the agreement.
32. Unfair Practice	Practices prohibited by law which apply to the employer or the employee organization.

APPENDIX

TEXT OF SENATE BILL NO. 160

Senate Bill No. 160

CHAPTER 961

An act to repeal Article 5 (commencing with Section 13080) of Chapter 1 of Division 10 of the Education Code, and to add Chapter 10.7 (commencing with Section 3540) to Division 4 of Title 1 of the Government Code, relating to public educational employment relations, and making an appropriation therefor.

[Approved by Governor September 22, 1975. Filed with Secretary of State September 22, 1975.]

LEGISLATIVE COUNSEL'S DIGEST

SB 160, Rodda. Public educational employer-employee relations.

The existing statutes which govern employer-employee relations at the elementary and secondary levels in the public school system, including community colleges, are the Winton Act.

The Winton Act provides, among other things, that public school employees shall have the right to form, join and participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations. The chosen employee organization has the right to represent its members in all matters relating to employment relations with public school employers. Representatives of a public school employer are required, upon request, to meet and confer with representatives of certificated and classified employee organizations on all matters relating to employment conditions and employer-employee relations, and with representatives of employee organizations representing certificated employees on procedures relating to educational objectives and aspects of the instructional program.

This bill would repeal the Winton Act operative July 1, 1976.

This bill would enact provisions to govern employer-employee relations of public school employers (as defined, including community college districts) and public school employees (as defined) through meeting and negotiating (as defined) on matters within the scope of representation.

This bill would enact provisions which would:

(1) Define various terms.

(2) Specify that the scope of representation is limited to wages, hours of employment, specified health and welfare benefits, leave and transfer policies, safety conditions of employment, class size, employee evaluation procedures, and grievance processing procedures.

(3) Create a 3-member Educational Employment Relations Board appointed by the Governor with the advice and consent of the Senate. Prescribe membership, terms, filling of vacancies, compensation, staffing, powers and duties of the board, including the

determination of issues of appropriateness of units and scope of representation, conducting secret representation elections, establishing lists of qualified mediators, arbitrators, and factfinders, conducting related studies and recommending needed legislation, adopting rules and regulations, investigating and determining charges of unfair practices, holding hearings, and issuing and enforcing, in superior court, subpoenas.

(4) Grant employees the right to form, join, and participate in employee organizations for the purpose of representation and the right to refuse to join, or participate in employee organizations. Prescribe rights, powers, and duties of employees, employee organizations, representatives, and exclusive representatives.

(5) Provide for recognition by employers or certification by the board, of exclusive representatives (as defined) for appropriate units and require their meeting and negotiating with employers. Prohibit any employee or other employee organization from representing that unit in employment relations with the employer once an exclusive representative has been chosen.

(6) Require fair representation. Require presentation of prescribed initial proposals at a public meeting of the employer and prescribe related time schedules and related publicity, public record, and public meeting requirements. Prohibit representation of management employees (as defined) and confidential employees (as defined) by an exclusive representative but permit individual representation or by an employee organization composed entirely of such employees but without power to meet and negotiate.

(7) Prescribe requirements and procedures for recognition and certification of exclusive representatives, including secret elections, and for declaration and resolution of impasses by mediators and, if that fails, by factfinding panels and specify guiding criteria therefor.

(8) Prescribe general criteria for appropriateness of units.

(9) Authorize entry into written agreements covering matters within the scope of representation, including organizational security, and exempt such agreements from a specified policy provision. Authorize such agreements to provide for final and binding grievance arbitration of disputes involving interpretation, application, or violation of such agreements and, in absence thereof, authorize submission of such disputes to final and binding arbitration pursuant to rules of the commission. Provide for utilization of designated judicial procedures.

(10) Make specified acts of employers unlawful, including certain acts against employees because of their exercise of rights afforded hereby, denial of rights of employee organizations, refusal or failure to meet and negotiate in good faith with an exclusive representative, and domination of, interference with, or financial or other support of, any employee organization.

(11) Make specified acts of employee organizations unlawful, including certain acts against employers, certain acts against em-

ployees because of their exercise of rights afforded hereby, and refusal or failure to meet and negotiate in good faith with the public school employer of employees of which it is the exclusive representative.

(12) Make Section 923 of the Labor Code inapplicable to public school employees but prohibit such provision from causing any court or the board to hold invalid any negotiated agreement entered into pursuant to this act.

(13) Establish judicial review of unit determinations and unfair practice decisions, under certain conditions.

Provide for numerous related matters.

Appropriate $300,000 for support of the Educational Employment Relations Board.

Make the provisions relating to creation and certain duties of, and appropriation for, the board operative on January 1, 1976. Make the provisions relating to the organizational rights of employees, the representational rights of employee organizations, and the recognition of exclusive representatives and the related procedures operative on April 1, 1976, and the balance of the added provisions operative on July 1, 1976.

This bill would also provide that there are no state-mandated local costs that require reimbursement pursuant to Section 2231, Revenue and Taxation Code because there are no duties, obligations, or responsibilities imposed on local government by this act.

The people of the State of California do enact as follows:

SECTION 1. Article 5 (commencing with Section 13080) of Chapter 1 of Division 10 of the Education Code is repealed.

SEC. 2. Chapter 10.7 (commencing with Section 3540) is added to Division 4 of Title 1 of the Government Code, to read:

CHAPTER 10.7. MEETING AND NEGOTIATING IN PUBLIC EDUCATIONAL EMPLOYMENT

Article 1. General Provisions

3540. It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. Nothing contained herein shall be deemed to supersede other provisions of

the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

It is the further intention of the Legislature that nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of any academic senate or faculty council established by a school district in a community college to represent the faculty in making recommendations to the administration and governing board of such school district with respect to district policies on academic and professional matters, so long as the exercise of such functions do not conflict with lawful collective agreements.

It is the further intention of the Legislature that any legislation enacted by the Legislature governing employer-employee relations of other public employees shall be incorporated into this chapter to the extent possible. The Legislature also finds and declares that it is an advantageous and desirable state policy to expand the jurisdiction of the board created pursuant to this chapter to cover other public employers and their employees, in the event that such legislation is enacted, and if this policy is carried out, the name of the Educational Employment Relations Board shall be changed to the "Public Employment Relations Board."

3540.1. As used in this chapter:

(a) "Board" means the Educational Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his duties, has access to, or possesses information relating to, his employer's employer-employee relations.

(d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so

substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Educational Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him, as a condition of continued employment, if he does join, to maintain his membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his obligation to the employee organization within a period of 30 days following the expiration of a written agreement; or

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of such organization for the duration of the agreement, or a period of three years from the effective date of such agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

(*l*) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively

recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Article 2. Administration

3541. (a) There is in state government the Educational Employment Relations Board which shall be independent of any state agency and shall consist of three members. The members of the board shall be appointed by the Governor by and with the advice and consent of the Senate. One of the original members shall be chosen for a term of one year, one for a term of three years, and one for a term of five years. Thereafter terms shall be for a period of five years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Members of the board shall be eligible for reappointment. The Governor shall select one member to serve as chairperson. A member of the board may be removed by the Governor upon notice and hearing for neglect of duty or malfeasance in office, but for no other cause.

(b) A vacancy in the board shall not impair the right of the remaining members to exercise all the powers of the commission, and two members of the board shall at all times constitute a quorum.

(c) Members of the board shall hold no other public office in the state, and shall not receive any other compensation for services rendered.

(d) Each member of the board shall be paid an annual salary of thirty-six thousand dollars ($36,000). In addition to his salary, each member of the board shall be reimbursed for all actual and necessary expenses incurred by him in the performance of his duties, subject to the rules of the State Board of Control relative to the payment of such expenses to state officers generally.

(e) The board shall appoint an executive director and such other persons as it may from time to time deem necessary for the performance of its functions, prescribe their duties, fix their compensation and provide for reimbursement of their expenses in the amounts made available therefor by appropriation. The executive director shall be a person familiar with employer-employee relations. He shall be subject to removal at the pleasure of the board. The board may employ a general counsel to assist it in the performance of its functions under this chapter. A person so employed may, independently of the Attorney General, represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested.

3541.3. The board shall have all of the following powers and duties:

(a) To determine in disputed cases, or otherwise approve,

appropriate units.

(b) To determine in disputed cases whether a particular item is within or without the scope of representation.

(c) To arrange for and supervise representation elections which shall be conducted by means of secret ballot elections, and certify the results of the elections.

(d) To establish lists of persons broadly representative of the public and qualified by experience to be available to serve as mediators, arbitrators, or factfinders. In no case shall such lists include persons who are on the staff of the board.

(e) To establish by regulation appropriate procedures for review of proposals to change unit determinations.

(f) Within its discretion, to conduct studies relating to employee-employer relations, including the collection, analyses, and making available of data relating to wages, benefits, and employment practices in public and private employment, and, when it appears necessary in its judgment to the accomplishment of the purposes of this chapter, recommend legislation. The board shall report to the Legislature by February 15th of each year on its activities during the immediately preceding calendar year. The board may enter into contracts to develop and maintain research and training programs designed to assist public employers and employee organizations in the discharge of their mutual responsibilities under this chapter.

(g) To adopt, pursuant to Chapter 4.5 (commencing with Section 11371) of Part 1 of Division 3 of Title 2, rules and regulations to carry out the provisions and effectuate the purposes and policies of this chapter.

(h) To hold hearings, subpoena witnesses, administer oaths, take the testimony or deposition of any person, and, in connection therewith, to issue subpoenas duces tecum to require the production and examination of any employer's or employee organization's records, books, or papers relating to any matter within its jurisdiction.

(i) To investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

(j) To bring an action in a court of competent jurisdiction to enforce any of its orders decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

(k) To delegate its powers to any member of the board or to any person appointed by the board for the performance of its functions, except that no fewer than two board members may participate in the determination of any ruling or decision on the merits of any dispute coming before it and except that a decision to refuse to issue a

complaint shall require the approval of two board members.

(l) To decide contested matters involving recognition, certification, or decertification of employee organizations.

(m) To consider and decide issues relating to rights, privileges, and duties of an employee organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more employee organizations.

(n) To take such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

3541.4. Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents, in the performance of duties pursuant to this chapter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not more than one thousand dollars ($1,000).

3541.5. The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

(b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based of alleged violation of such a agreement that would not also constitute an unfair practice under this chapter.

(c) The board shall have the power to issue a decision and order

directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

Article 3. Judicial Review

3542. (a) No employer or employee organization shall have the right to judicial review of a unit determination except: (1) when the board in response to a petition from an employer or employee organization, agrees that the case is one of special importance and joins in the request for such review; or (2) when the issue is raised as a defense to an unfair practice complaint.

(b) Any charging party, respondent, or intervenor aggrieved by a decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, shall have the right to seek review in a court of competent jurisdiction. Additionally, the board shall have the right to seek enforcement of any decision or order in a court of competent jurisdiction. The findings of the board on questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Once the record of the case has been filed with the court of competent jurisdiction, its jurisdiction shall be exclusive and its judgment final, except that it shall be subject to appeal to higher courts in this state.

Article 4. Rights, Obligations, Prohibitions, and Unfair Practices

3543. Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.

Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a

resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

3543.1 (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

(d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 13532 and 13604.2 of the Education Code, until such time as an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

3543.2. The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave and transfer policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, and procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the

scope of representation.

3543.3. A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

3543.4. No person serving in a management position or a confidential position shall be represented by an exclusive representative. Any person serving in such a position shall have the right to represent himself individually or by an employee organization whose membership is composed entirely of employees designated as holding such positions, in his employment relationship with the public school employee, but, in no case, shall such an organization meet and negotiate with the public school employer. No representative shall be permitted by a public school employer to meet and negotiate on any benefit or compensation paid to persons serving in a management position or a confidential position.

3543.5. It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

3543.6. It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

(d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

3543.7. The duty to meet and negotiate in good faith requires the parties to begin negotiations prior to the adoption of the final budget

for the ensuing year sufficiently in advance of such adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse.

Article 5. Employee Organizations: Representation, Recognition, Certification, and Decertification

3544. An employee organization may become the exclusive representative for the employees of an appropriate unit for purposes of meeting and negotiating by filing a request with a public school employer alleging that a majority of the employees in an appropriate unit wish to be represented by such organization and asking the public school employer to recognize it as the exclusive representative. The request shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate and shall include proof of majority support on the basis of current dues deduction authorizations or other evidence such as notarized membership lists, or membership cards, or petitions designating the organization as the exclusive representative of the employees. Notice of any such request shall immediately be posted conspicuously on all employee bulletin boards in each facility of the public school employer in which members of the unit claimed to be appropriate are employed.

3544.1. The public school employer shall grant a request for recognition filed pursuant to Section 3544 unless:

(a) The public school employer desires that representation election be conducted or doubts the appropriateness of a unit. If the public school employer desires a representation election, the question of representation shall be deemed to exist and the public school employer shall notify the board, which shall conduct a representation election pursuant to Section 3544.7, unless subdivision (c) or (d) apply; or

(b) Another employee organization either files with the public school employer a challenge to the appropriateness of the unit or submits a competing claim of representation within 15 workdays of the posting of notice of the written request. The claim shall be evidenced by current dues deductions authorizations or other evidence such as notarized membership lists, or membership cards, or petitions signed by employees in the unit indicating their desire to be represented by the organization. If the claim is evidenced by the support of at least 30 percent of the members of an appropriate unit, a question of representation shall be deemed to exist and the public school employer shall notify the board which shall conduct a representation election pursuant to Section 3544.7, unless subdivisions (c) or (d) of this section apply; or

(c) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described

in the request for recognition, unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement; or

(d) The public school employer has, within the previous 12 months, lawfully recognized another employee organization as the exclusive representative of any employees included in the unit described in the request for recognition.

3544.3. If, by January 1 of any school year, no employee organization has made a claim of majority support in an appropriate unit pursuant to Section 3544, a majority of employees of an appropriate unit may submit to a public school employer a petition signed by at least a majority of the employees in the appropriate unit requesting a representation election. An employee may sign such a petition though not a member of any employee organization.

Upon the filing of such a petition, the public school employer shall immediately post a notice of such request upon all employee bulletin boards at each school or other facility in which members of the unit claimed to be appropriate are employed.

Any employee organization shall have the right to appear on the ballot if, within 15 workdays after the posting of such notice, it makes the showing of interest required by subdivision (b) of Section 3544.1.

Immediately upon expiration of the 15-workday period following the posting of the notice, the public school employer shall transmit to the board the petition and the names of all employee organizations that have the right to appear on the ballot.

3544.5. A petition may be filed with the board, in accordance with its rules and regulations, requesting it to investigate and decide the question of whether employees have selected or wish to select an exclusive representative or to determine the appropriateness of a unit, by:

(a) A public school employer alleging that it doubts the appropriateness of the claimed unit; or

(b) An employee organization alleging that it has filed a request for recognition as an exclusive representative with a public school employer and that the request has been denied or has not been acted upon within 30 days after the filing of the request; or

(c) An employee organization alleging that it has filed a competing claim of representation pursuant to subdivision (b) of Section 3544.1; or

(d) An employee organization alleging that the employees in an appropriate unit no longer desire a particular employee organization as their exclusive representative, provided that such petition is supported by current dues deduction authorizations or other evidence such as notarized membership lists, cards, or petitions from 30 percent of the employees in the negotiating unit indicating support for another organization or lack of support for the incumbent exclusive representative.

3544.7. (a) Upon receipt of a petition filed pursuant to Section

3544.3 or 3544.5, the board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the questions raised by the petition. The determination of that board may be based upon the evidence adduced in the inquiries, investigations, or hearing; provided that, if the board finds on the basis of the evidence that a question of representation exists, or a question of representation is deemed to exist pursuant to subdivision (a) or (b) of Section 3544.1, it shall order that an election shall be conducted by secret ballot and it shall certify the results of the election on the basis of which ballot choice received a majority of the valid votes cast. There shall be printed on each ballot the statement: "no representation." No voter shall record more than one choice on his ballot. Any ballot upon which there is recorded more than one choice shall be void and shall not be counted for any purpose. If at any election no choice on the ballot receives a majority of the votes cast, a runoff election shall be conducted. The ballot for the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(b) No election shall be held and the petition shall be dismissed whenever:

(1) There is currently in effect a lawful written agreement negotiated by the public school employer and another employee organization covering any employees included in the unit described in the request for recognition, or unless the request for recognition is filed less than 120 days, but more than 90 days, prior to the expiration date of the agreement; or

(2) The public school employer has, within the previous 12 months, lawfully recognized an employee organization other than the petitioner as the exclusive representative of any employees included in the unit described in the petition.

3544.9. The employee organization recognized or certified as the exclusive representative for the purpose of meeting and negotiating shall fairly represent each and every employee in the appropriate unit.

Article 6. Unit Determinations

3545. (a) In each case where the appropriateness of the unit is an issue, the board shall decide the question on the basis of the community of interest between and among the employees and their established practices including, among other things, the extent to which such employees belong to the same employee organization, and the effect of the size of the unit on the efficient operation of the school district.

(b) In all cases:

(1) A negotiating unit that includes classroom teachers shall not be appropriate unless it at least includes all of the classroom teachers

employed by the public school employer except management employees, supervisory employees, and confidential employees.

(2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

(3) Classified employees and certificated employees shall not be included in the same negotiating unit.

Article 7. Organizational Security

3546. Subject to the limitations set forth in this section, organizational security, as defined, shall be within the scope of representation.

(a) An organizational security arrangement, in order to be effective, must be agreed upon by both parties to the agreement. At the time the issue is being negotiated, the public school employer may require that the organizational security provision be severed from the remainder of the proposed agreement and cause the organizational security provision to be voted upon separately by all members in the appropriate negotiating unit, in accordance with rules and regulations promulgated by the board. Upon such a vote, the organizational security provision will become effective only if a majority of those members of the negotiating unit voting approve the agreement. Such vote shall not be deemed to either ratify or defeat the remaining provisions of the proposed agreement.

(b) An organizational security arrangement which is in effect may be rescinded by majority vote of the employees in the negotiating unit covered by such arrangement in accordance with rules and regulations promulgated by the board.

3546.5. Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion. An employee organization required to file financial reports under the Labor-Management Disclosure Act of 1959 covering employees governed by this chapter shall be exempt from the requirements of this section.

Article 8. Public Notice

3547. (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

Article 9. Impasse Procedures

3548. Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be provided by the board without cost to the parties. Nothing in this section shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure and in the event of such agreement, the board shall not appoint its own mediator, unless failure to do so would be inconsistent with the policies of this chapter.

If the parties agree upon their own mediation procedure, the cost of the services of any appointed mediator, unless appointed by the board, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

3548.1. If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party may, by written notification to the other, request that their differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The board shall, within five days after such selection, select a chairman of the factfinding panel. The chairman designated by the board shall not, without the consent of both parties, be the same person who served as mediator pursuant to Section 3548.

3548.2. The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take such other steps as it may deem appropriate. For the purpose of such hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The several departments, commissions, divisions, authorities, boards, bureaus, agencies, and officers of the state, or any political subdivision or agency thereof, including any board of education, shall furnish the panel, upon its request, with all records, papers and information in their possession relating to any matter under investigation by or in issue before the panel.

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

(1) State and federal laws that are applicable to the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the public school employee-employer.

(4) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services and with other employees generally in public school employment in comparable communities.

(5) The consumer price index for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received.

(7) Such other facts, not confined to those specified in paragraphs

(1) to (6), inclusive, which are normally or traditionally taken into consideration in making such findings and recommendations.

3548.3. If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt. The costs for the services of the panel chairman, including per diem fees, if any, and actual and necessary travel and subsistence expenses shall be borne by the board. Any other mutually incurred costs shall be borne equally by the public school employer and the exclusive representative. Any separately incurred costs for the panel member selected by each party, shall be borne by such party.

3548.4. Nothing in this article shall be construed to prohibit the mediator appointed pursuant to Section 3548 from continuing mediation efforts on the basis of the findings of fact and recommended terms of settlement made pursuant to Section 3548.3.

3548.5. A public school employer and an exclusive representative who enter into a written agreement covering matters within the scope of representation may include in the agreement procedures for final and binding arbitration of such disputes as may arise involving the interpretation, application, or violation of the agreement.

3548.6. If the written agreement does not include procedures authorized by Section 3548.5, both parties to the agreement may agree to submit any disputes involving the interpretation, application, or violation of the agreement to final and binding arbitration pursuant to the rules of the board.

3548.7. Where a party to a written agreement is aggrieved by the failure, neglect, or refusal of the other party to proceed to arbitration pursuant to the procedures provided therefor in the agreement or pursuant to an agreement made pursuant to Section 3548.6, the aggrieved party may bring proceedings pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure for a court order directing that the arbitration proceed pursuant to the procedures provided therefor in such agreement or pursuant to Section 3548.6.

3548.8. An arbitration award made pursuant to Section 3548.5, 3848.6, or 3848.7 shall be final and binding upon the parties and may be enforced by a court pursuant to Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

Article 10. Miscellaneous

3549. The enactment of this chapter shall not be construed as

making the provisions of Section 923 of the Labor Code applicable to public school employees and shall not be construed as prohibiting a public school employer from making the final decision with regard to all matters specified in Section 3543.2.

Nothing in this section shall cause any court or the board to hold invalid any negotiated agreement between public school employers and the exclusive representative entered into in accordance with the provisions of this chapter.

3549.1. All the proceedings set forth in subdivisions (a) to (d), inclusive, shall be exempt from the provisions of Sections 965 and 966 of the Education Code, the Bagley Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3) and the Ralph M. Brown Act (Chapter 9 commencing with Section 54950) of Part 1 of Division 2 of Title 5, unless the parties mutually agree otherwise:

(a) Any meeting and negotiating discussion between a public school employer and a recognized or certified employee organization.

(b) Any meeting of a mediator with either party or both parties to the meeting and conferring process.

(c) Any hearing, meeting, or investigation conducted by a factfinder or arbitrator.

(d) Any executive session of the public school employer or between the public school employer and its designated representative for the purpose of discussing its position regarding any matter within the scope of representation and instructing its designated representatives.

3549.3. If any provisions of this chapter or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 3. There is hereby appropriated from the General Fund to the Educational Employment Relations Board the sum of three hundred thousand dollars ($300,000) for the support of the board.

SEC. 4. Sections 3541 and 3541.3 of the Government Code, as added by Section 2 of this act, and Section 3 of this act, shall become operative on January 1, 1976. Sections 3543, 3543.1, 3544, 3544.1, 3544.3, 3544.5, 3544.7, and 3545 of the Government Code, as added by Section 2 of this act, shall become operative on April 1, 1976. Section 1 of this act and all other provisions of Section 2 of this act shall become operative on July 1, 1976.

SEC. 5. There are no state-mandated local costs in this act that require reimbursement under Section 2231 of the Revenue and Taxation Code because there are no duties, obligations or responsibilities imposed on local government by this act.